



MEMO TO FILE

March 28, 2023

Subject: Zoning Administrator Interpretations
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Background

Pursuant to Planning Code Section 307(a), the Zoning Administrator (ZA) issues rules, regulations, and interpretations they deem necessary to administer and enforce the provisions of the Code. Formal interpretations are listed within the Planning Code, as well as a series of topical bulletins (e.g., neighborhood notice, bicycle parking, affordable housing, etc.).

Interpretations

The attached document details several ZA determinations to amend, repeal, or adopt new Planning Code interpretations.

Appeals

Each individual ZA determination in the attached document is separately appealable to the Board of Appeals within 15 days of issuance. A single appeal may not be filed to encompass two or more separate determinations.

Attachments:

Amendments to Zoning Administrator Interpretations of the Planning Code – Issued March 28, 2023

cc: Tina Tam, Deputy Zoning Administrator
Elizabeth Watty, Director of Current Planning
Odaya Buta, Office of City Attorney
Citywide Neighborhood Groups

Amendments to Zoning Administrator Rules, Regulations, and Interpretations of the Planning Code – March 28, 2023

NOTE: Additions are single-underline italics Times New Roman;

Deletions are ~~strike-through italics Times New Roman~~.

INTERPRETATIONS BY CODE SECTION

Code Section: 102 and 270

Subject: Measurement of Bulk and Plan Dimensions

Effective Date: 03/23

Interpretation:

Section 270(a) states that the bulk limits of Section 270 are measured by Plan Dimensions, which are defined in Section 102. Section 270(a) also states that bulk limits apply to buildings and structures. Per Sec. 102, the Plan Dimensions used to measure bulk are defined to be “dimensions of a building or structure, at a given level, between the outside surfaces of its exterior walls.” Section 102 also defines a Building to be any structure having a roof supported by columns or walls. The Planning Code provides no guidance or methods to allow multiple parts of the same building or structure to rely on separate calculations for Plan Dimensions for bulk limits.

Therefore, unless specified elsewhere in the Planning Code, the maximum Plan Dimensions per specific bulk limits apply within the exterior walls of each individual building or structure, such that a single building may not have multiple vertical elements (i.e., towers, etc.) that collectively exceed the maximum permitted Plan Dimensions. However, separate buildings on the same lot will have separate Plan Dimensions for the purpose of measuring bulk limits.

Code Section: 134(f)

Subject: Corner Lots as Through Lots

Effective Date: 03/23

Interpretation:

This section states the following: “Where a lot is a Corner Lot, or is a through lot having both its front and its rear lot line along Streets, Alleys, or a Street and an Alley, and where an adjoining lot contains a residential or other lawful structure that fronts at the opposite end of the lot, the subject through lot

may also have two buildings according to such established pattern, each fronting at one end of the lot, provided that all the other requirements of this Code are met.” While this provision applies to Corner Lots, a typical Corner Lot does not have its rear lot line along a street. Therefore, only a Corner Lot that that has frontage on three separate Streets and/or Alleys may qualify for the provisions of this section (see Block 0145 Lot 037 and Block 4058 Lot 009 as examples).

Subject: Expansion of Legalized Dwelling Units Over Permitted Density

Effective Date: 03/23

Interpretation:

Section 181(c)(2) states that dwelling units that are nonconforming due to density may not be enlarged, altered, or reconstructed beyond the building envelope as it existed on January 1, 2013. Section 207.3 allows the legalization of dwelling units that meet certain criteria. Section 207.3(e)(2) states that one such dwelling unit on a lot is allowed to exceed the permitted density authorized for that zoning district provided that a residential use is principally permitted in that zoning district and that expansion of the additional dwelling unit within the building envelope shall be permitted as part of the legalization process. However, “building envelope” is not defined for this purpose.

The following 1996 interpretation of Section 311 exempts certain “Fill-ins” from notice:

“Fill-ins”: The filling in of the open area under a cantilevered room or room built on columns is exempt only if the height of the open area under the room does not exceed one story or 12 feet. The exemption does not apply to space immediately under a deck nor to space under a room known to be illegal.

Therefore, dwelling units nonconforming as to density per Section 181(c) and dwelling units legalized per Section 207.3 may expand pursuant to the 1996 interpretation for “Fill-ins” and still be considered to be within the existing building envelope.

Code Section: 260(b)(1)

Subject: Height Exemptions

Effective Date: 03/23

Interpretation:

This section allows the Zoning Administrator to grant a height exemption for an elevator penthouse for a building with a height limit of more than 65 feet when it’s found that that such an exemption is required to meet state or federal laws or regulations. The building at 655 Montgomery Street extends higher than its height limit and presented a case where an existing Building Maintenance Unit (BMU) needed to be replaced, but state regulations required a larger BMU to safely service the building.

Therefore, it was determined that the Zoning Administrator height exemption of Section 260(b)(1) shall be expanded to also include BMUs.

Code Section: 303.1

Effective Date: 07/09 (Moved and Revised 03/23)

Interpretation:

~~SEC. 703.3. FORMULA RETAIL USES and 303(i) CONDITIONAL USES (FORMULA RETAIL).~~
This section ~~These sections~~ of the Code defines formula retail uses as a type of retail activity "along with eleven or more other retail sales establishments located in the United States" that maintains two or more characteristics listed in this section. A question was has been raised whether it is the eleventh or the twelfth establishment that which triggers the formula retail requirement for approval of a Conditional Use Authorization. It was has been determined that a Conditional Use Authorization is required for the twelfth establishment.

INTERPRETATIONS – ALPHABETICAL

Subject: Formula Retail

~~Effective Date: 09/07~~

Interpretation:

~~—This paragraph requires Conditional Use authorization for all new formula retail uses (as defined by Section 703.3(c)) in any Neighborhood Commercial District. The Zoning Administrator has determined that a change from one formula retail use to another requires a new Conditional Use authorization in Neighborhood Commercial Districts, whether or not a Conditional Use authorization would otherwise be required by the particular change in use in question. This Conditional Use authorization requirement also applies in changes from one Formula Retail operator to another within the same Article 7 use category.~~

~~—However, from time to time, corporations that operate formula retail outlets are purchased in whole or in part by other corporations, often resulting in a name change and necessity for new signage or minor exterior alterations, which require a valid signage or building permit approved by the Planning Department for a number of outlets. A situation arose where a number of outlets of an existing supermarket chain that met the definition of formula retail under the Planning Code were purchased by another supermarket chain that also met the definition of formula retail. The new corporate owner would continue what was considered by the Zoning Administrator to be essentially the same type of operation, with the only major change being the store name. The store size was to remain the same, and the merchandise offering, aside from store brands, would be very similar, providing essentially the same retail service as offered previously. It is hereby determined that the requirement for a new Conditional Use authorization in such cases shall not apply to a change in a formula retailer that meets both of the following criteria:~~

~~—the formula use operation remains the same in terms of its size, function and general merchandise offering as determined by the Zoning Administrator; and~~

~~—the change in the formula retail use operator is the result of multiple existing operations being purchased by another formula retail operator.~~

~~The new operator shall comply with all conditions of approval previously imposed on the existing operator, including but not limited to signage programs and hours of operation; and shall conduct the operation generally in the same manner and offer essentially the same services and/or type of merchandise; or seek and be granted a new Conditional Use authorization.~~

~~Subject: Formula Retail Thresholds~~

~~Effective Date: 07/09~~

~~Interpretation:~~

~~SEC. 703.3. FORMULA RETAIL USES and 303(i) CONDITIONAL USES (FORMULA RETAIL). These sections of the Code define formula retail uses as a type of retail activity "along with eleven or more other retail sales establishments located in the United States" that maintains two or more characteristics listed in this section. A question has been raised whether it is the eleventh or the twelfth establishment which triggers the formula retail requirement for approval of a Conditional Use Authorization. It has been determined that a Conditional Use Authorization is required for the twelfth establishment.~~