

Mitigation Plan Applicable Code

Sec. 37-659. Mitigation Plan submission

The following material shall accompany an application for a Mitigation Plan. (*Nonconformities that have more severe impacts should be required to mitigate those impacts in a timely manner. Because of the investment in the property, it may be impractical to expect the use to discontinue operations. The Mitigation Plan allows the use to continue while offering relief for neighboring properties. Some measures might be to add landscaping, fencing, or parking spaces. Plans to shield lights, limit hours, control noise or dust may also be possible. Mitigation measures will depend on the nature of each use.*)

- (a) Application for a Mitigation Plan on forms provided by the Planning Department.
- (b) Site plan meeting the requirements of this Article.
- (c) A description of proposed measures to mitigate the impact of the nonconforming use and time schedule for instituting such measures.
- (d) Fee as established elsewhere in Chapter 26 of the Code. *Fee is \$* _____

Sec. 37-660. Mitigation Plan site plan requirements

Each application for a Mitigation Plan approval shall be accompanied by a site and landscape plan (collectively, the “site plan”). The dimensions of said site plan shall not exceed 24” x 36” and shall be drawn to a scale which is not numerically greater than 100’ = 1”. The following data and information shall be included in said site plan:

- (a) The location, dimension, material, and configuration of all structures, and other improvements.
- (b) A statement of the current use of the property. The owner may substitute another nonconforming use, insofar as the use proposed to be allowed through the Mitigation Plan is equal to, or is more restricted than, the classification of the former use and such substitution or addition does not increase congestion in the streets, impair the health, safety, morals or general welfare of the district in which it is located.
- (c) The location and extent of usable open space.
- (d) The location, access, and other dimensions of existing and proposed off-street parking facilities and the number and configuration of spaces to be provided.
- (e) The location, dimensions, and materials of existing and proposed sidewalks, driveways, and other impervious surfaces.
- (f) The location and intensity of illumination of any illuminated areas.
- (g) The proposed use of open space.
- (h) A landscaping plan in accordance with the requirements of Article X. Landscaping and Screening.
- (i) The location of all property lines, utilities and related easements, including electric lines, storm drainage, sanitary sewers, and water services.
- (j) The elevation of all structures to depict height.
- (k) The lot size in square feet and the dimensions thereof.
- (l) The land uses surrounding the lots for which site plan approval is being sought.
- (m) A date, north arrow, scale, legal description and address of the property, and name of the development.

Sec. 37-661. Procedure for Mitigation Plan review

- (a) Upon receipt of a complete application with the accompanying material, the Zoning Administrator shall schedule the item to be reviewed by the Zoning Board of Appeals. (*Notice*

requirements include a legal notice in the newspaper, written notice to surrounding property owners, and a sign posted on the property.)

- (b) The Planning Department shall give notice of the public hearing in accordance with the procedures for a Zoning Board of Appeals hearing on a variation as indicated in Article XIV. Zoning Board of Appeals.
- (c) The Zoning Administrator shall prepare a report, presenting the facts of the case to the Zoning Board of Appeals. The report shall make a recommendation to forward the case to City Council; to approve; approve with additional requirements; or to defeat the proposed Mitigation Plan. In the event the Board defeats the proposed Mitigation Plan, the case may be forwarded to the City Council for appeal by the applicant. *(The public hearing provides neighbors an opportunity to voice their concerns. Their comments may suggest additional mitigating measures.)*
- (d) The Zoning Board shall conduct a hearing in accordance with the procedures in Article XIV. Zoning Board of Appeals.

Sec. 37-662. Mitigation Plan findings

Before approving any Mitigation Plan, the Board shall make a favorable finding of fact, solely based upon evidence presented at the public hearing. The findings shall always include the following: *(This may include upgrading landscaping, screening, parking, signs, and performance standards to conform to the regulations. The plan may include a schedule to phase such items in over time.)*

- (a) That the continued operation in accordance with the plan will not increase congestion in the streets, or impair the health, safety, morals or general welfare of the residents or other occupants of surrounding properties.
- (b) That the plan includes adequate measures to mitigate current and potential future negative impacts of the use.
- (c) That the owners are proposing no changes to the use which would potentially create additional negative impacts from the use.
- (d) That if no negative impacts of the use as currently operated are identified, the proposed mitigation plan maintains all aspects of the use as it is currently operated.
- (e) That the continuation of the nonconforming use, in consideration of the degree of land use conflict between a nonconforming use and its surrounding properties, will not diminish the value of nearby property, nor impair the public health, safety, morals or general welfare of the residents or other occupants of surrounding properties.

Sec. 37-663. Mitigation Plan approval

The Zoning Board of Appeals will approve or defeat the proposed Mitigation Plan. Approval of the Mitigation Plan may also include additional conditions and requirements as are appropriate or necessary for the protection of the public health, safety, and welfare, and to satisfy the findings required for approving a Mitigation Plan. Such conditions may include, but are not limited to the following:

- (a) Regulate the location, extent, and intensity of certain aspects of the use as appropriate. *An example would be to haul away inoperable vehicles or to eliminate other nuisance violations.*
- (b) Require additional landscaping or screening of such uses by means of fences, walls, and vegetation.
- (c) Regulate vehicular access and the design and location of parking and loading areas and structures.
- (d) Require conformance to health, safety, and sanitation requirements as necessary.
- (e) Regulate signs and outdoor lighting to be more compatible with the surrounding neighborhood.
- (f) Any other conditions deemed necessary to effect the purposes of this Chapter.

Sec. 37-664. Mitigation Plan certificate

As part of the approval of the request for a Mitigation Plan, the Board shall complete a “Certificate of Approval” which shall contain the following information:

- (a) A legal description and common address of the subject property.
- (b) A statement for each finding summarizing how such finding has been satisfied.
- (c) Any conditions, safeguards, or flexible standards imposed on the Mitigation Plan as a condition of approval.
- (d) A list of mitigation measures not indicated on the site plan.
- (e) A time table for undertaking mitigation measures.
- (f) Any exhibits, including the site plan, shall be attached to the Mitigation Plan permit with a statement that the Mitigation Plan approval is conditioned on the project being operated in accordance with such plans unless specific exceptions are stated in the Certificate of Approval.

Sec. 37-665. Mitigation Plan amendments – minor

The Mitigation Plan shall control operations of the use. Minor amendments to the approved Mitigation Plan may be made to the Zoning Administrator in writing. The Zoning Administrator shall review the written request to determine if the request qualifies as a minor amendment. The Zoning Administrator may approve the following minor amendments:

- (a) Flexibility that has been expressly provided for through the Certificate of Approval.
- (b) Minor changes that have not been specifically identified as a major amendment. Such change may only be authorized if engineering or other physical limitations of the site, not foreseen at the time the Mitigation Plan was approved, warrant such a change.

Sec. 37-666. Mitigation Plan amendments – major

Major amendments may only be made under the procedures that are applicable to the initial approval of a Mitigation Plan. Unless accounted for in the Certificate of Approval, the following are major amendments:

- (a) A reduction in overall amount of usable open space.
- (b) A reduction in off-street loading and parking spaces by 10%.
- (c) The change in location of any structure by more than 10' in any direction.
- (d) An overall reduction in the area designated for landscaping treatment.
- (e) A change in the circulation pattern that would reduce or increase points of access, change access to another street, or increase projected traffic volumes.
- (f) A delay in the deadline to undertake any specific mitigation measure by more than 6 months. Delays for planting of landscape for seasonal conditions shall not constitute a major amendment.
- (g) A combination of 3 or more changes classified as minor amendments, which have not been specifically allowed by the Certificate of Approval, shall constitute a major amendment.

Sec. 37-667. Failure to approve Mitigation Plan

If the Zoning Board of Appeals fails to approve the Mitigation Plan, the landowner may elect one of the following options: *(It should be extremely rare that the Zoning Board of Appeals could not establish some form of mitigation that would be acceptable to the applicant. If this did occur, there is an opportunity to appeal to City Council. If Council does not approve mitigation, then the use should be terminated. A period of only 10 years is allowed as an incentive for the property owner to agree to some form of mitigation. In some instances, the intensity of the use could make the formulation of an acceptable Mitigation Plan very difficult. An example would be an industrial use in a residential area. In these cases, the use should be terminated.)*

- (a) Resubmit a new application and plan.
- (b) Appeal to City Council. If City Council disapproves the Mitigation Plan, then the application shall be referred back to the Zoning Board of Appeals to determine a termination date for the nonconforming use.
- (c) In any one case, only 3 proposed Mitigation Plans may be submitted. If none of these plans are approved by the Board or City Council, then a date for termination of the nonconforming use must be established.
- (d) Such termination date shall be based on the severity of the impacts, the expected economic life of the structure, the market value of the investment, and any other relevant factors. In no case shall the termination date be longer than 10 years.

Sec. 37-668. Failure to reapply for or to comply with the Mitigation Plan

Failure to comply with the Mitigation Plan shall constitute a zoning violation and shall be subject to zoning enforcement action.