



**Planning and Zoning Commission  
August 5, 2020 Meeting  
Staff Report**

**DATE:** July 30, 2020

**TO:** Planning and Zoning Commission Members

**FROM:** Zachary D. Gordon, AICP, Planning Director

**SUBJECT: Text Amendment – TA-2020-02: Section 10.1. Street Improvement Standards and Appendix C.1.8. Sidewalk, Curb and Gutter Exception**

Public Hearing to consider text amendments to Section 10.1. Street Improvement Standards and Appendix C.1.8. Sidewalk, Curb and Gutter Exception

**A. Actions Requested by Planning and Zoning Commission Members**

1. Consider Resolution to Adopt a Statement of Consistency for TA-2020-01
2. Consider motion to recommend approval of proposed text amendments by City Council

**B. Decision and Required Votes to Pass Requested Action**

Article 3.8 of the UDO addresses the procedures for processing amendments to the text of the ordinance. Per Section 3.8.2, “*Any person, board, department, or commission may apply for a change in zoning ordinance text*”. The proposed text amendment was initiated by the Planning Department.

Per Sections 3.8.3.2 and 3.8.3.3 of the UDO, a majority vote of the Planning and Zoning Commission is required to recommend approval of a text amendment. A recommendation to approve is then forwarded to City Council who shall, either approve or deny the text amendment by a majority vote.

**C. Background**

Staff is proposing to amend **Section 10.1. Street Improvement Standards and Appendix C.1.8. Sidewalk, Curb and Gutter Exception** to clarify the requirements for when these improvements are required in conjunction with development proposals. The proposed text amendments would also address new development on “existing” private streets, by requiring that engineering and public works staff assess the impact of this development and determine whether mitigation (e.g. road or drainage improvements) should be required as a condition of development approval by City staff. Recently, there have been several instances where development has occurred on an existing private street, which has negatively impacted the condition of the street, resulting in hardship for current property owners who live on that street, which has led to complaints to elected officials and city staff, along with requests for City assistance to repair the street.

The proposed text amendments are consistent with the proposed text changes being recommended for the new “Kannapolis Development Ordinance (KDO), which we anticipate will be adopted by this fall and made effective January 1, 2021. The text amendments to Section 10.1 would address “when” these improvements are required and also provide guidance on when they are “not required”, rendering Appendix C.1.8 (which currently provides guidance for exceptions to these requirements) unnecessary. The proposed text amendments are being recommended by staff now, rather than waiting for full adoption of the KDO, due to the large number of development proposals currently being reviewed where questions have arisen regarding when these improvements are required; particularly for smaller “in-fill” development proposals. Staff feels it would be prudent to move forward with these text amendments now, rather than waiting for the KDO to be completed, in order to enhance and clarify our development plan review process for the development community and to allow for the consistent application of the City’s development regulations.

**D. Fiscal Considerations**

None.

**E. Policy Issues**

The proposed text amendment to the UDO is **attached** as **additions and deletions**:

**F. Legal Issues**

None

**G. Alternative Courses of Action and Staff Recommendation**

The Planning and Zoning Commission may choose to recommend approval or denial of the text amendment as presented. The Commission may also add, delete, or change any of the language as proposed.

Based on the foregoing analysis, staff recommends **approval** of the proposed text amendments to **Section 10.1. Street Improvement Standards and Appendix C.1.8. Sidewalk, Curb and Gutter Exception** of the Unified Development Ordinance.

**The following actions are required to recommend approval of TA 2020-02**

1. Consider Resolution to Adopt a Statement of Consistency for TA 2020-02
2. Consider motion to recommend approval of proposed text amendments by City Council.

**The following actions are required to recommend denial of TA 2020-02**

1. Consider Resolution to not Adopt a Statement of Consistency for TA 2020-02
2. Consider motion to recommend denial of proposed text amendments by City Council.

**H. Attachments**

1. Application for Text Amendment to the Unified Development Ordinance
2. Proposed UDO changes
3. Resolution to Adopt a Statement of Consistency

**I. Issue Reviewed By:**

Assistant City Manager (W. Melton)  
City Attorney (W. Safrit, II)  
City Engineer (S. Kaufhold)  
Planning Director (Z. Gordon)



**Planning and Zoning Commission and Board of Adjustment  
General Application Form  
(Not for Site Plan Review Submittals)**

Type of Action Requested (Check One):

- |                        |                                     |                                  |       |
|------------------------|-------------------------------------|----------------------------------|-------|
| Variance               | _____                               | SIA Application                  | _____ |
| Conditional Use Permit | _____                               | Nonconformity Adjustment         | _____ |
| Subdivision Exception  | _____                               | Watershed Boundary Modification  | _____ |
| Zoning Text Amendment  | <input checked="" type="checkbox"/> | Zoning Map Amendment             | _____ |
| Appeal                 | _____                               | Conditional Zoning Map Amendment | _____ |

Applicant: Zachary D. Gordon, AICP      Owner: \_\_\_\_\_  
Planning Director

Address: 401 Laureate Way      Address: \_\_\_\_\_  
Kannapolis, NC 28081

Telephone: 704-920-4355      Telephone: \_\_\_\_\_

Email: zgordon@kannapolisnc.gov      Email: \_\_\_\_\_

Legal relationship of applicant to property owner: N/A

Property Location/Address: N/A

Tax Parcel Number: N/A      Zoning District: N/A      Acreage of Site: N/A

Zachary D. Gordon      \_\_\_\_\_  
Applicant Name (Print)      Property Owner Name (Print)

[Signature]      \_\_\_\_\_  
Applicant Signature & Date      Property Owner Signature & Date

*The agenda deadline is the first day of the month preceding the month of the meeting. To be considered for placement on the next meeting agenda, the signed application, application fee, and five (5) copies of any required site plans for staff review must be submitted by the deadline. However, to remain on the next meeting agenda, fifteen (15) copies of such plans, determined by staff to conform to all ordinance standards, must be submitted at least ten (10) days before the meeting date. All fees are nonrefundable and help to cover administrative and notification costs.*

For Staff Use Only:

Filing Fee: \_\_\_\_\_      Receipt # \_\_\_\_\_

Application No.: \_\_\_\_\_      Date Submitted (Complete): \_\_\_\_\_



**CITY OF KANNAPOLIS**

**AN APPLICATION TO AMEND THE TEXT OF  
THE UNIFIED DEVELOPMENT ORDINANCE**

I Zachary D. Gordon, AICP, hereby make application for an amendment to the following section(s) of the Unified Development Ordinance:

Section 10.1 Street Improvement Standards and Appendix C.1.8 Sidewalk, Curb and Gutter Exception

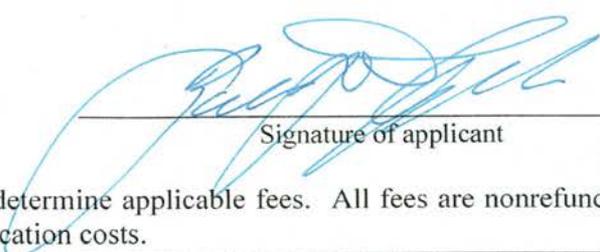
In the space provided below, or on a separate sheet, present your requested text for the Ordinance provisions in question:

**See attached Staff Report**

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State your reasons for amending the text of the Ordinance:

**See attached Staff Report**



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Signature of applicant

**Fee:** Please refer to fee schedule to determine applicable fees. All fees are nonrefundable and help to cover administrative and notification costs.

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Green text – Text to be added

~~Red strikethrough text~~ – Text to be deleted

## **10.1. STREET IMPROVEMENT STANDARDS.**

### **10.1.1. PURPOSE.**

The purpose of this Section is to prescribe minimum design standards for new public and/or private streets. These requirements may exceed the standards prescribed by NCDOT for the acceptance of streets into the Secondary System of State Highways.

### **10.1.2 SIDEWALKS AND OTHER PEDESTRIAN FACILITIES**

**10.1.2.1** Except as otherwise provided by subsection 10.1.2.2 below, sidewalks, and/or curb and gutter (where required by the street cross-sections for the applicable street cross-sections in the LDSM) are required along the entire frontage of a development located on an existing street, and along both sides of all streets within the development. Sidewalks, curb and gutter, shall comply with all applicable standards in the LDSM and with any additional sidewalk standards that apply in the zoning district (see Article 4: Zoning Districts and Dimensional Regulations).

**10.1.2.2** Sidewalks, and/or curb and gutter are not required if the street cross-section in the LDSM for the applicable street classification does not require a sidewalk, and/or curb and gutter. Additionally, the Planning Director, in consultation with the Public Works Director and the City Engineer, may waive or modify the requirement for sidewalks in specific locations on determining the sidewalk:

1. Would be duplicative of an existing greenway or other pedestrian way;
2. Is included in a project for which state funding has been allocated or is already included within the City's Capital Improvement Program (CIP);
3. Is impractical or infeasible due to the presence of topographic conditions or natural features, such as steep grades that do not allow connections to be made; or
4. Would not be located within 500 feet of an existing sidewalk on the same side of the street, provided a public easement for the future installation of a sidewalk is granted, or dedication of additional right-of-way where there is insufficient right-of-way to accommodate a future sidewalk and other required right-of-way improvements.

#### **10.1.2.3 Exempt lots and Lots on Existing Streets Not Requiring Utility Extensions**

1. For exempt lots, or lots located on existing streets that do not require the dedication of new right-of-way or the extension of utilities (excluding lateral connections) sidewalks, curb and gutter improvements will not be required along the frontage of these lots unless such improvements are already in place adjacent to the lot being developed.
2. Where a development has frontage on an existing street with insufficient right-of-way width to accommodate installation of a required sidewalk (and any associated curb and gutter) along the frontage, the developer shall dedicate additional right-of-way for the installation of the required sidewalk or install the sidewalk on the development site within a dedicated public easement running parallel and adjacent to the public street.
3. Sidewalks or other pedestrian ways shall be constructed within any [commercial, mixed-use, or multifamily] development consisting of multiple buildings to link buildings in the development with other destinations in the development, including parking areas, open space and other on-site amenities, and other common areas serving the development (e.g., mailbox clusters), and with sidewalks and other pedestrian ways on adjoining lands.

#### **10.1.2.4 Pedestrian Access at Cul-de-Sacs**

In all districts except the AG, RE, and HI districts, if a cul-de-sac street is proposed, a minimum eight feet wide pedestrian access shall be provided from the cul-de-sac head or a location on the cul-de-sac street within 200 feet of the cul-de-sac head to an adjoining street, sidewalk, other pedestrian way, or open space where practicable

### **10.1.3 PUBLIC STREETS.**

**10.1.3.1** Public streets shall be designed and constructed in accordance with the LDSM standards for the applicable street classification type, as determined by the Public Works director in accordance with the Street Classification Standards, the CRMPO Comprehensive Transportation Plan, and all applicable locally adopted plans.

**10.1.3.2** All streets within a proposed development shall conform in alignment to any publicly adopted transportation plan, including the Comprehensive Transportation Plan and all applicable locally adopted plans.

**10.1.3.3** Where a proposed subdivision abuts an existing street maintained by the City or NCDOT, the applicant shall dedicate right-of-way necessary to accomplish future road improvements, in accordance with state law. Where the subdivision, or development abuts has is designed to utilize the street for frontage and/or direct access on an existing street maintained by the City or NCDOT, the subdivider or developer shall make any required improvements to the street so it conforms to the LDSM standards for the applicable street classification type, or the CRMPO Comprehensive Plan.

**10.1.3.4** New developments shall provide curb, gutter, sidewalks, and tree grates or a planting area between the street and the sidewalk, from the new development to adjacent public streets that provide access to the development, in accordance with the LDSM. All such planting areas and tree grates shall be planted with street trees spaced apart an average of 40 feet or less on center. Road widening, sidewalks, bike lanes, street trees, curb and guttering, utility relocations, and all other related improvements shall be the responsibility of the developer and/or owner. The Planning Director may waive or modify the requirement for sidewalks, or curb and gutter in specific locations in accordance with Section 10.1.2.2 above.

~~10.1.1.1. Public streets shall be designed and constructed in accordance with Appendix C of this Ordinance<sup>(4)</sup> and the Land Development Standards Manual (LDSM), except that streets constructed in a TND Traditional Neighborhood Development district shall conform to the provisions of § 4.10 of this Ordinance.~~

~~10.1.1.2. Pursuant to NCGS § 136-66.2, where a proposed subdivision abuts an existing street or roadway included in the City or North Carolina Department of Transportation street system, the applicant shall be required to dedicate<sup>(4)</sup> right of way as deemed necessary to accomplish future road improvements<sup>(3)</sup> in accordance with the policy on file in the office of the Public Works Director.~~

~~10.1.1.3. Where a subdivision abuts an existing street or roadway included in the City or North Carolina Department of Transportation street system and, where permitted, is designed to utilize such street for frontage and direct access, the subdivider shall be required to improve such street in accordance with the<sup>(3)</sup> policy on file in the office of the Public Works Director.~~

#### **10.1.3.5 Street Classification System.**

**10.1.3.5.1** Classification of an existing or proposed street not already identified on the Thoroughfare Plan, for the purpose of determining the appropriate design of a roadway or development, or for the purpose of determining the appropriateness of a location for a proposed use, shall be done by the Administrator in consultation with the Director of Transportation.

**10.1.3.5.2** The street classification system set forth in Table 10.1-1 is hereby adopted for rural and urban streets. Streets may be further categorized pursuant to the adopted *Cabarrus-South Rowan Urban Area Transportation Plan*.

##### **<sup>(2)</sup>Table 10.1-1 Street Classifications**

Freeway/Expressway  
Major Thoroughfare  
Minor Thoroughfare  
Collector (residential and non-residential)  
Residential Street  
Alley

**10.1.3.6 Determination Criteria.** In determining the classification of a street, factors to be considered include the following existing or proposed features:

**10.1.3.6.1** Facility Geometrics, including the number and width of traffic lanes, turning lanes, and parking lanes.

**10.1.3.6.2** Access Conditions, including any restrictions on access, the spacing of private accesses, and average lot frontages.

**10.1.3.6.3** Traffic Characteristics, including ADT, percentage of trucks, average operating speed, percentage of turning movements, origin-destination characteristics of the traffic, and peak hour characteristics of traffic.

**10.1.3.6.4** In applying these factors, the Administrator may refer to § 10.1.2.4.2 and the sources listed therein, which are hereby incorporated by this reference.

**10.1.3.7 Designation Authority.** Utilizing the criteria of § 10.1.2.5, above, in conjunction with the Thoroughfare Plan Map and the narrative descriptions for each roadway classification provided in Appendix C<sup>(4)</sup> and the LDSM, Director of Transportation shall determine which of the Thoroughfare Plan designations apply to the street under consideration.

#### **10.1.4 PRIVATE STREETS.**

**10.1.4.1** Private streets that develop as part of a subdivision, or integrated commercial, industrial, multifamily residential or institutional development shall be designed and constructed to the public street standards set forth in Appendix C of this Ordinance<sup>(4)</sup> and the LDSM. Private streets (with established right-of-way for public utilities) shall be allowed in TND and PUD developments and should be designed in accordance with the standards of those sections in Article 4. <sup>(1)</sup>Private streets (with established right-of-way for public utilities) shall be allowed in single-family residential subdivisions with less than 100 lots subject to City approval. This section shall not include private accessways/driveways as regulated in Article 8

**10.1.4.2** A legally responsible organization (i.e. homeowners association, special district, etc.) as acceptable to the Administrator shall be established to maintain a private street(s). Documents to assure private responsibility of future maintenance and repair by a homeowners association or a special district shall be approved as to form by the Administrator.

**10.1.4.3** <sup>(1)</sup>A private street maintenance agreement, satisfactory to the Administrator and Public Works Director, must be recorded by the developer and/or property owner(s) in the office of the Register of Deeds to ensure proper maintenance. The agreement shall specify lot owners' responsibilities for maintenance of private streets and drainage systems, and shall provide for assessments to finance all maintenance activities. In addition, all property transfer instruments must contain reference to that agreement, as well as a statement indicating if the private street does meet public standards for maintenance and that it will not be considered for public maintenance unless improved by the legally responsible organization to those standards. This agreement shall also specify that unless the street is privately maintained in condition for safe passage of public service and emergency vehicles, the City may provide such maintenance, with charges therefore becoming a lien on the properties served, dividing among them proportionate to their assessed tax valuation.

**10.1.4.4** <sup>(1)</sup>All gated or controlled access subdivisions within the jurisdiction of this Ordinance must provide continuous accessibility to subdivision lots for provision of public service and emergency vehicles. The method of continuous accessibility will be defined within the private street maintenance agreement, and shall be approved by the City Manager (and/or designees).

#### **10.1.5 DEVELOPMENT ON PRIVATE STREETS**

**10.1.5.1** For the proposed development of a lot or lots (including exempt lots) on an existing private street (not maintained by the City), the Engineering Department shall assess the street to determine whether the street is suitable to accommodate the additional traffic anticipated to be generated by the proposed new development.

**10.1.5.2** In making a determination whether an existing private street is suitable to accommodate additional traffic to be generated by new development on that street, the Engineering Director (or designee) shall assess the condition of the existing private street based on the standard cross section for private streets, found in the City's

LDSM.

**10.1.5.3** If the private street is deemed to be suitable to accommodate additional traffic by the Engineering Director (or designee), a zoning clearance permit for development will be issued by the City Planning Department. If the street is deemed not to be suitable to accommodate the traffic to be generated by the proposed development, the Engineering Director (or designee) shall identify what mitigation is required to accommodate the proposed development, including but not limited to: repair of the existing street sub-base or surface; repair, addition or enhancement of drainage structures; and or the addition of right-of-way to accommodate necessary improvements. Once the required improvements have been made, the City Planning Department will issue a Zoning Clearance permit for the requested development.

**10.1.5.4** Any improvements made to accommodate the proposed new development shall not be deemed as sufficient to satisfy the requirements necessary to dedicate the private street to the City for public maintenance.

**10.1.5.5** At the time an assessment of an existing private street is made by the Engineering Director (or designee), the Director will (upon request) provide the applicant with a composite list of requirements to dedicate the private street for acceptance by the City, in accordance with the City's Policy for street acceptance.

## **10.1.6 STREET LAYOUT STANDARDS.**

This Section establishes general standards regarding the manner in which the public street system of a development is planned.

**10.1.6.1 Conformity to adopted Plans.** The streets within the proposed subdivision shall conform in alignment to the adopted *Cabarrus-South Rowan Urban Area Transportation Plan* and the related Collector Street Plan. The improvement standards of the Thoroughfare Plan shall not apply, except where such a standard has been specifically set forth in Appendix C of this Ordinance and the LDSM. Whenever a tract to be subdivided embraces any part of a collector street or thoroughfare so designated on a plan approved pursuant to NCGS § 136-66.2, such part of the proposed street or thoroughfare shall be platted by the subdivider in the location and width indicated on such plan. Stub streets within previously platted subdivisions shall be extended and the street system aligned thereto and to the Collector Street Plan.

## **APPENDIX C –Design Standards for Streets and Utilities.**

### ~~C.1.8—Sidewalk, Curb, and Gutter Exception.~~

- ~~- The Public Works Director (or designee) shall make recommendations to the City Manager, who may grant an exception from the sidewalk, curb, and gutter requirements if any of the following scenarios exists:~~
  - ~~1.—Where the topography on a numbered State highway or local City street does not allow for the reasonable or practical installation of sidewalks, curbs, and gutters; and/or~~
  - ~~2.—In instances where the NCDOT or City has not yet determined the ultimate right of way width for numbered State highways and/or local streets; and/or~~
  - ~~3.—Where the State highway and/or local street is identified in the Kannapolis Sidewalk Plan as a project to be built as part of a larger sidewalk/street improvement project included within the Capital Improvement Program (CIP). In such cases, an exception may be granted for the construction of the sidewalk; however, exceptions to curb and gutter would only be permitted if scenarios 1 and/or 2 above also exist.~~
  - ~~4.—Projects located along a State road that are either funded and/or under study with NCDOT.~~
  - ~~5.—Local streets or State roads that have not been identified by the State or City as an improvement or study project but that are deemed by the City Engineer and Public Works Director as possibly becoming a project or identified as being a street or road that may not warrant improvements to be installed at this time.~~
  - ~~6.—Curb and gutter is not required for limited access and partial access highways nor is a payment in lieu of construction of curb and gutter required for frontal areas along such highways. Sidewalks would remain as a requirement along these highways.~~

~~7.—Curb and gutter is not required on projects located in watershed areas that allow additional density when these improvements are not installed. Sidewalks would remain as a requirement along these highways.~~

- ~~- Such an exception, if granted, would be subject to the following conditions:
  - ~~1. The developer would be required to pay a fee in lieu of the required installation.~~
  - ~~2. The fee would be calculated annually, based on actual costs for typical construction during the~~
  - ~~3. previous fiscal year at a rate of 110% to cover administrative costs and the cost of inflation, with the following exceptions:

~~On streets identified in the Kannapolis Sidewalk Plan as requiring sidewalk on only one side of the street, the fee shall be calculated annually based on actual costs for typical construction during the previous fiscal year at a rate of 55% to cover administrative costs and the cost of inflation.~~~~
  - ~~4. The fee would be put into a Sidewalk, Curb, and Gutter Reserve Account administered by the City of Kannapolis~~
  - ~~5. The Reserve Account would only be used for the construction of sidewalks, curbs, and gutters at locations within the same Sidewalk Maintenance Routes/ Zones as the project where the exception was granted. Funds collected may be used for the construction of a greenway if 1) a greenway, as proposed in the Livable Communities Blueprint, abuts the property to be developed, and/or 2) it is determined that a proposed greenway will more adequately serve pedestrian traffic and better meet the intent of the sidewalk requirement.~~
  - ~~6. Reserve Account funds will be expended within seven (7) years of the date collected.~~
  - ~~7. Exceptions may be granted for sidewalks, and/or curb & gutter by the City Manager except in scenarios specified above.~~
  - ~~8. Paying into the Reserve Account does not release a developer from providing any required rights of way and/or easement dedications.~~~~
- ~~- Should a developer not agree to all of the above conditions, all sidewalks, curbs and gutters associated with development must be installed per the current requirements of this Ordinance.~~
- ~~- This exception may only be applied to existing public streets~~
- ~~- A written application for a sidewalk, curb, and gutter exception shall be submitted to the Planning Department demonstrating:
  - ~~1. That the project meets one or more of the above stated scenarios.~~
  - ~~2. That the developer agrees to all of the above stated conditions.~~~~
- ~~- The Sidewalk, Curb, and Gutter Committee shall make findings as to whether the requirements of this section have been met and that the reasons set forth in the application justify the granting of the exception.~~
- ~~- The Committee shall present such findings to the City Manager with seven (7) days of the receipt of the written application.~~
- ~~- The City Manager shall make a decision regarding the matter within seven (7) days of the receipt of the Committee's recommendations.~~
- ~~- An appeal from the findings of the City Manager may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the Administrator an application for an Appeal from a Final Order, Decision, or Interpretation.~~
- ~~- An appeal must be submitted within seven (7) days after the date of the findings by the City Manager.~~
- ~~- The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the findings appealed from and shall make any order, requirements, decision or determination that in its opinion ought to be made in the case before it.~~



**RESOLUTION TO ADOPT A STATEMENT OF CONSISTENCY WITH REGARD TO  
TEXT AMENDMENT TA-2020-02**

**WHEREAS**, Section 160A-383 (2013) of the North Carolina General Statutes specifies that the governing board shall also approve a statement describing whether its action is consistent with an adopted comprehensive and any other officially adopted plan that is applicable; and

**WHEREAS**, Planning Department staff has proposed a text amendment to **Section 10.1. Street Improvement Standards and Appendix C.1.8. Sidewalk, Curb and Gutter Exception** of the Unified Development Ordinance (UDO) to clarify the requirements for when these improvements are required in conjunction with development proposals; and to address new development on “existing” private streets, by requiring that engineering and public works staff assess the impact of this development and determine whether mitigation (e.g. road or drainage improvements) should be required as a condition of development approval by City staff; and

**WHEREAS**, the Planning and Zoning Commission conducted a Public Hearing on August 5, 2020 for consideration of text amendment TA-2020-02 as submitted by the Planning Department staff;

**NOW, THEREFORE BE IT RESOLVED** that the Planning and Zoning Commission finds the text amendment as represented in Case TA-2020-02 consistent with the *Move Kannapolis Forward 2030 Comprehensive Plan*, as well as state statutes, reasonable, and in the public interest, and is recommended for approval by the City Council based on consideration of the application materials, information presented at the Public Hearing, and the recommendation provided by Staff.

**Adopted this the 5<sup>th</sup> Day of August, 2020;**

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David Steele, Chairman  
Planning and Zoning Commission

Attest:

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Pam Scaggs, Recording Secretary  
Planning and Zoning Commission