



Planning Division

ZONING INTERPRETATION RECORD

ZIL19-02
April 19, 2019

SUBJECT OF INTERPRETATION:

Catlin Court District Planned Area Development (PAD)

ZONING CODE ORDINANCE SECTIONS:

Catlin Court PAD Sections: Land Use Standards for Office and Residential Uses

CAUSE FOR INTERPRETATION:

A zoning interpretation has been requested by Jeffrey Koppelmaa on behalf of owners of property, Coit and Valerie Burner, in the Catlin Court Planned Area Development Zoning District. This request is for an interpretation of the Planned Area Development (PAD) language in two portions of the Land Use section, 1) Professional Office Space Uses, and 2) Residential Uses.

INTERPRETATION:

Part 1- District-Wide Office Use Standard

Applicable PAD Section: **Land Use**, Subsection **Professional Office Space Use**
(p. 30 of the PAD)

“Professional office use on the first floor of the buildings shall be limited to no more than twenty-five percent of the total conglomerate first floor area of the district. Professional office use is permitted on the second floors and in basements. In addition to professional offices, service retail such as travel agencies are permitted under this category.”

Planning Administrator Interpretation:

In summary, the land use standard that is the subject of this interpretation is substantially flawed and unenforceable because it creates a floating entitlement and attempts to apply a standard on a district-wide basis where standards such as maximum floor area ratio (FAR) are customarily applied to individual properties.

Background:

The stated intent of the Catlin Court District is “to develop a specialty retail district including a mix of retail stores, restaurants with a percentage of office and residential use.”

There are approximately 50 individual parcels or lots in the Catlin Court PAD district that are--effectively-- permitted office uses. The restriction of 25% maximum office use does not apply to the individual lots but is intended to be applied on a district-wide basis according to the PAD (p.30-31).

The intended land use standard to control the land use mix in Catlin Court is a maximum amount (25%) of professional office use of the first floor of buildings in the Planned Area Development District. As a land use regulation, the accurate measurement (in square feet typically) of a specific land use, in this case ‘professional office,’ would be required on a district-wide basis. To be reasonably enforceable, an accurate inventory of first floor office use (as well as the total square footage existing in the District at a given point in time) would be required as a basis of approval or denial of office use in Catlin Court.

Analysis:

Typically, land use regulations regarding limitations on specific uses are applied and enforced across a single property. Limitations on floor area ratios are normally applied in Arizona to individual parcels, not conglomerate or entire zoning districts. There is no known precedent or practice supporting the enforceability of similar standards on interior space use such as the specialty retail and office use proportions described in the Catlin Court PAD.

The 25% standard is flawed as it creates a ‘floating’ entitlement that property owners possess one day, and then potentially lose the next day. Under the intended scheme in the PAD, as uses change over time on individual properties in Catlin Court, other property owners, practically speaking, are not able to ascertain whether professional office is an allowed use on their property as there is no reliable way to track or inventory the precise amount (and whether the 25% office use limit of the district has been reached) of professional office use at any one point in time.

Additionally, the amount of office use changes over time as property use changes with tenants, property owner interests, and market conditions, among other reasons. Property owners are not compelled to provide exact amounts of various permitted land uses because they are permitted (retail and office for example). Many owners change uses without the need for City building safety permits or other types of review and approval. Further, the 25% maximum also changes with new construction, demolitions, and modifications to existing buildings. It is therefore a constantly moving target- which, again, is highly unusual for a land use or zoning regulation. These dynamic conditions confirm the inability of any entity, public or private, to create a reliably accurate database of office use square footage in Catlin Court.

In good faith, the City has explored various methods of enforcing the land use mix regulation of Catlin Court including: 1) a city-conducted survey of existing buildings in the District, 2) requiring applicants to perform such a survey, and 3) adding additional approval processes for

businesses in Catlin Court. None of these methods have provided a way to reasonably and reliably enforce the 25% office use standard.

Review of the records pertaining to the preparation and adoption of the Catlin Court PAD does not provide any clear information on how this provision was to be measured or enforced. Further, the PAD is silent with regard to measurement and enforcement methods, let alone providing any requirement for an inventory and the maintenance of an inventory.

Inventory:

A reliable inventory of retail and office use has never been completed in Catlin Court. In fact, the creation of such a database is impractical and perhaps impossible. An accurate survey of the square footage of office use would need to be conducted through inspection of the interior of 100% of the structures in the PAD district.¹ All 50 owners would need to provide access to their interior space in order to ascertain an accurate amount of office use- at the time of the inspection. Such an inspection for zoning compliance purposes would be, at a minimum, highly burdensome, if not illegal.

The expectation that every property owner would submit to such an inspection is unrealistic. The inspection could not be compelled by the City without first obtaining an administrative search warrant (which requires probable cause that an inspection is required, a difficult if not impossible effort given the legal murkiness of finding probable cause based on an alleged violation of a zoning document (the PAD), Even if the City could make such a showing and obtain warrants, it is extremely unlikely it could obtain warrants or consent to enter every property in Catlin Court, as would be required in order to discern the actual amount of first-floor square footage in the district.²

Concerns regarding the enforceability of this regulation were identified by City staff in 2015 and 2016 as evidenced in public records provided by the applicant. At that time, it was publicly stated that there was no reliable official inventory and no way to maintain one. Attempts to create such an inventory and update or maintain it have proven unsuccessful and impractical.

¹ No party can confidently rely on data from the Maricopa County Assessor's Office. Upon entering the Assessor's parcel viewer database, users are greeted by a screen that states "CAUTION: USERS SHOULD INDEPENDENTLY RESEARCH AND VERIFY INFORMATION WITHIN THIS DATASET OR MAP BEFORE RELYING ON IT." The 12-sentence disclaimer stresses the lack of reliability of the information the database provides, and the disclaimer later notes, among other cautionary statements, that "[t]he Assessor does not guarantee that any information contained within this dataset map is accurate, complete or current...the original information may have contained errors and omissions. Errors and omissions may have occurred in the process of gathering, interpreting and reporting the information."

² For example, take the situation of the first property owner to operate an office use in Catlin Court and assume that person operates a home-based business that is not open to the public and that person simply does not wish to consent to the City entering his property to inspect the first floor of his building. There is no dispute that the PAD is not violated by the owner's office use and therefore no way for the City to establish the probable cause it would need to enter the property (even assuming a violation of a PAD gives rise to probable cause to conduct a search). As stated, the City cannot obtain consent to enter the property. One instance such as this one renders it impossible to calculate the total first-floor square footage in Catlin Court.

Observations from the public right of way, as has been attempted, are insufficient to determine interior floor area use in Catlin Court. This method, previously attempted by the City, would not be defensible as accurate.

Although previously attempted by city staff and private property owners, a complete inventory of office use in Catlin Court has never been successfully completed. The methods used in previous attempts are unreliable and not defensible in the Planning Administrator's opinion. The City attempted to complete a database over an approximate ten-year period, from 2007 to 2017, as public records appear to document. As indicated in public records of this effort, the results of the inventory were not clear or concise enough to deny an owner's reasonable use (professional office use in this case) of the owner's private property.

A private database being prepared by private parties with vested interest in the PAD would not be verifiable or reliable. Such an undertaking would not only encounter the same or even greater difficulties with respect to compliance but would also potentially have the effect of pitting one property owner against another over a regulation supposedly based in public health, safety and welfare. This is not a supportable method of enforcement.

Without a reliable database, the city has no factual basis for denial of office use, and further no evidence exists that specialty retail space is not available for those desiring to use it in Catlin Court.

Summary:

City staff is committed to enforce all land use regulations, however in this specific case, the regulation is deemed unenforceable because it creates a floating entitlement, it attempts to apply a standard suited for individual parcels to an entire district, and there is no practical way to compile an inventory of properties that would be needed in order to employ this land use system.

For these reasons, the land use mixture standard contained in this PAD District is unenforceable. Applications for permits involving professional office use in the Catlin Court PAD should not be denied based on the 25% professional office use cap included in the Catlin Court Planned Area Development District³.

Recommendations:

One potential solution to the applicant's intent to control office use is to amend the Catlin Court PAD so that the land use restriction applies to each individual property as it is improved, redeveloped or otherwise altered. At the time of building permit, each building or property could be limited through the application of permit conditions, to 25% ground floor office use. This would align with standard land use regulation practices in Arizona. The concurrence of the

³ Historically, limited demand has existed for specialty retail property in downtown Glendale, and current conditions are no different as demonstrated by the several properties that are vacant and available for specialty retail use in Catlin Court. As such, any property owner or business interested in operating a specialty retail business has the opportunity to do so- today. The existing office uses in Catlin Court have not 'squeezed out' potential or desired retail uses.

affected property owners in the district would be required under Arizona law in approving such a change in zoning.

Part 2- Residential Use Limitation

Applicable PAD Section: **Land Use**, Subsection, **Residential Uses**
(p. 31 of the PAD)

“A person may live and work within the same building while conducting business. Residential use is limited to one dwelling unit per land property.”

Analysis:

Analysis of the language of the PAD was done in a land use regulation context since the document is in effect a zoning code for Catlin Court. The language appears permissive rather than restrictive. The PAD does expressly limit each property to a single dwelling unit and in that regard is restrictive.

The text does not mandate that residential uses require an associated business use, nor does it state that residential use is permitted only when ancillary to a retail use. It appears to assume that residential uses are permitted and simply states, ‘a person may live and work in the same building.’ The second sentence, ‘residential use is limited to one dwelling...’ appears to clarify that residential use is permitted, however limited to a single dwelling unit. The second sentence of the PAD excerpt does not refer to or modify the first sentence and independently operates to allow residential uses in Catlin Court.

Upon review, the PAD document identifies that residential character exists and is intended to be maintained in Catlin Court (pgs. 1, 13, 14, 26, 31 and 32). Residential use logically is a part of residential character in a zoning district or in a neighborhood. To prohibit residential use in an area noted for residential character does not seem logical nor appear defensible.

The PAD does not state a business use is required on every property in the PAD district nor does it state that a residence is only permitted where a business is operated as read by the Planning Administrator. There is no language that states ‘solely residential use’ is prohibited as indicated by the applicant. Simply put, the suggestion that stand-alone residential uses are prohibited is not stated anywhere in the text of the PAD.

As read, the regulation appears to allow residential use in addition to specialty retail. The PAD text does not state, ‘only while conducting business.’ If the qualifier ‘only’ or similar language had been used the intent would be clear and there would be no need for interpretation. As written, the PAD supports multiple uses of the same building.

Summary:

The PAD contains no statement barring residential use unless it is an ancillary, supporting or secondary use to a companion retail uses. It does state that both retail and residential uses are permitted to exist at the same time. Experience with various land use regulations in Arizona shows that some commercial zoning districts also permit primary residential use.

This supports the interpretation that a single use structure (one that is solely residential) is intended and permitted.

Based on over 30 years' experience in writing, reviewing and interpreting land use regulations, the Planning Administrator does not believe the intent based on the language of the PAD was to prohibit residential use if no business was associated with it. The PAD language is interpreted to permit single family residential use of the property in Catlin Court.

Recommendation:

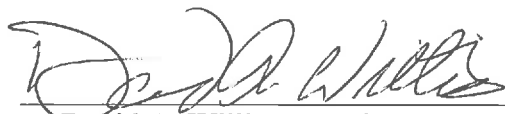
An amendment to the PAD would clarify the status of residential use as a primary or secondary or ancillary use. The concurrence of the affected property owners in the district would be required under Arizona statutes in approving such a zoning change.

CONCLUSION:

Regarding Part 1, Office Use, of this interpretation, the land use standard that is the subject of this interpretation is substantially flawed and unenforceable because it creates a floating entitlement a property owner could have one day and lose the next due to a neighbor's establishment of an office use. Further, the PAD attempts to apply this standard on a district-wide basis which would require an accurate inventory that is impractical to prepare and maintain. attempt

Regarding Part 2, Residential Use, the PAD contains no statement indicating residential use is allowed only as ancillary, supporting or secondary to retail uses. It does state that both retail and residential uses are permitted to exist at the same time in the same building.

Interpretation by:


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Planning Administrator

Date:

4.19.19