



## Planning and Zoning Commission

Monday, January 14, 2019  
7:00 PM – Fire Station #1  
701 US Hwy 60  
Republic, MO 65738

### MEETING AGENDA

1. Call Meeting to Order
2. Record Commissioners Present
3. Approve Agenda
4. Approve Minutes
  - a. P&Z Commission Meeting, November 13, 2018
5. Meeting Procedures
6. Hearings
  - a. **ORD 19-001.** Public Hearing and Possible Vote to Recommend the Approval of an Amendment of Chapter 405 Zoning Regulations, Section 405.185 Commercial Overlay District.
7. Citizen Participation
8. Community Development Department Update
9. Comprehensive Plan Update
10. Adjournment

**Individuals addressing the Commission are asked to step to the podium and clearly state their name and address before speaking. In accordance with ADA guidelines, if you need special accommodations to attend any city meeting, please notify the City Clerks' Office at 732-3140 at least three days prior to the scheduled meeting.**

*Ransom Ellis, Chairman  
Brandon Andrews, Vice Chairman  
Kevin Haun, Commissioner  
Cynthia Hyder, Commissioner*



*Tony Mitchell, Commissioner  
Erik Pedersen, Commissioner  
Randy Phelps, Commissioner  
Garry Wilson, Council Liaison*

**PLANNING AND ZONING COMMISSION  
City Council Chambers  
213 N. Main, Republic, MO  
November 13, 2018  
7:00 p.m.**

The regular meeting of the Planning and Zoning Commission was held on Tuesday, November 13, 2018, at Republic City Hall, 213 N. Main in Republic. Commissioners in attendance included Brandon Andrews, Vice-Chairman; Kevin Haun, Cynthia Hyder, Tony Mitchell and Erik Pedersen. Chairman Ransom Ellis and Commissioner Randy Phelps were absent for the meeting. Also in attendance were Garry Wilson, Councilmember Liaison; Scott Ison, City Attorney; Garrett Tyson, Community Development Director; Karen Haynes, Principal Planner; Garrett Brickner, City Engineer; and Connie Moller, Executive Assistant.

1. **Call Meeting to Order.** Vice-Chairman Brandon Andrews called the meeting to order at 7:00 p.m.
2. **Record Commissioners Present.** Commissioners in attendance included Brandon Andrews, Vice-Chairman; Kevin Haun, Cynthia Hyder, Tony Mitchell and Erik Pedersen. Chairman Ransom Ellis and Commissioner Randy Phelps were absent for the meeting.
3. **Approve Agenda.** Motion was made by Kevin Haun and seconded by Erik Pedersen to approve the agenda. Vote was 5 Aye – Andrews, Haun, Hyder, Mitchell and Pedersen. 0 Nays.
4. **Approve Minutes.**
  - a. **P & Z Commission Meeting, September 10, 2018.** Motion was made by Tony Mitchell and seconded by Kevin Haun to approve the September 10, 2018, meeting minutes. Vote was 5 Aye – Andrews, Haun, Hyder, Mitchell and Pedersen. 0 Nays.
  - b. **P & Z Commission Workshop, October 9, 2018.** Motion was made by Tony Mitchell and seconded by Erik Pedersen to approve the October 9, 2018, workshop minutes. Vote was 5 Aye – Andrews, Haun, Hyder, Mitchell and Pedersen. 0 Nays.
5. **Meeting Procedures.** Vice-Chairman Brandon Andrews read a statement regarding the process and procedures to be followed during the Planning and Zoning Commission meeting. Commission bases their recommendation on facts and evidence provided during

the public hearing with their recommendation to be forwarded to the City Council for consideration. The next Council meeting is scheduled for Tuesday, November 27th.

Vice Chairman Andrews thanked everyone for attending tonight's meeting and participating in the process.

City Attorney Scott Ison said tonight is the public hearing for the items on the agenda. There will be no public hearing at the City Council meeting. The first read of the ordinance will be at the City Council meeting and those for or against an agenda item may speak but tonight is the public hearing regarding the item.

## 6. Hearings.

- a. **SUB 18-003: Possible Vote to Recommend the Approval of an Application for a Preliminary Plat Highway 60 Business Center.** Vice-Chairman Brandon Andrews stated there will be no public hearing or citizen participation for this agenda item since this is an application for a preliminary plat. Principal Planner Karen Hayes provided information regarding the agenda item. The property consists of approximately 62 acres with direct access to Highway 60 and Farm Road 103. This plat includes 10 commercial lots with the property zoned General Commercial. This is the third submittal for this project; the first and second were reviewed in their entirety and noted deficiencies were sent to the property owner. The applicant requested this item be placed on the Planning and Zoning Commission agenda without consideration of the Technical Review Team and the Missouri Department of Transportation (MoDOT). This submittal is substantially different and did not include an updated traffic study. A subsequent letter was sent to the property owner advising them the submittal was incomplete and not in conformance with the department's plans. Information was provided regarding the noted deficiencies. Due to the changes in the preliminary plat, a traffic study needs to be completed and that was not submitted with the plat. Information was provided on the fire code and other requirements that have not been met.

Tyler McConnell, 3456 S. Farm Road 101, spoke regarding the items that were mentioned as not meeting code. Mr. McConnell said to his knowledge the street meets the code except for the East Side where it meets Farm Road 103. There is approximately 30 - 40' where it does not meet the 440' marker. He referenced the Thoroughfare Plan and had questions concerning how it would go over M Hwy. Community Development Director Garrett Tyson said the only portion that does not meet the Thoroughfare Plan is alignment of Farm Road 103 with Hwy. 60. Regarding the right-in and right-out, Mr. McConnell said this is already shown on the MoDOT map. He is asking for a relocate from the current location to allow for an upgrade to meet the standards. Mr. McConnell said he has no problem with putting in a cul-de-sac or hammerhead for the turn-arounds or with the fire hydrant requirements. Regarding the waterline, Mr. McConnell said they can connect it and make a loop system. Mr. McConnell said the dedicated easement for sanitary sewer was an oversight in the plans and he has no problem with making the change. As for the last two items, Mr. McConnell said the development is 183 acres and this plan is for 60 acres. They would like to eventually develop all 183 acres. He provided information on the Stormwater run-off. Mr. McConnell said he

would like to see the plat be approved so they can move forward with the development. He feels this will be a great development for the City due to the size and the number of companies they could bring into the area.

City Attorney Scott Ison asked Mr. McConnell if he is asking for this agenda item to be tabled or if he would like the Commission to move forward with the agenda item. Mr. McConnell said he does not have a problem with changing the items identified but he does not want to start the process over again. Community Development Director Garrett Tyson said if Mr. McConnell would like to address and change the items on the list then the recommendation would be to table the agenda item to allow time to address the items. Mr. McConnell said he would prefer the Commission voted on it as it is.

Dane Siler, 5051 S. National, addressed the Commission. He said he looked at the traffic the development would generate and the concern is the unknown as to how it will affect a project of this size and scope. He referenced the right-in and right-out and said with the amount of traffic coming into Republic at night, he feels this will be a challenge for traffic exiting the development.

**Commission Discussion** – Mr. Tyson provided additional information on the items discussed by Mr. McConnell and Mr. Siler.

Motion was made by Erik Pedersen and seconded by Tony Mitchell to approve the application for a Preliminary Plat for the Highway 60 Business Center. Vote was 0 Ayes, 6 Nays – Andrews, Haun, Hyder, Mitchell and Pedersen. Motion failed.

- b. **SU 18-001. Public Hearing and Possible Vote to Recommend the Approval of an Application for a Special Use Permit for a Real Estate Office in a Residential Zoning District, Located at 1101 East Elm Street.** Principal Planner Karen Haynes provided a presentation concerning the request. This is a specific use for a real estate office to be located at the intersection of Elm Street and Lynn Street. Ms. Haynes said this is not a rezoning application but the applicant is asking for a permit for a special use permit. The Special Use Ordinance does allow for an administrative use such as a real estate office. The applicant is asking to have two business signs not to exceed nine square feet. The City Code does allow for commercial offices with low-volume traffic in residential districts. Ms. Haynes said the site is currently served by water/sewer with no new connections or alterations needed. There is no floodplain or sinkholes identified on this property. The traffic volume on the streets is well within the volume allowed for a secondary arterial street. The potential traffic generated by this type of business would have essentially no effect on the traffic on these streets. This development must meet adopted plans and ordinances of the City with any changes, additional parking, etc., to be evaluated by staff administratively.

Mr. Tyson provided additional information concerning this agenda item. Previously this had been presented to the Commission as a rezone request. A Special Use permit is a permit to an applicant for a special use of the property. Unlike a zoning change that remains with a property, a Special Use permit is issued to the applicant and cannot be transferred. If they change the use of the property, the Special Use permit is done and

the permit expires. Should the applicant move and no longer own the property, the permit expires.

Commissioner Haun asked how many Special Use permits are there currently in the City. Mr. Tyson said he believes there have been less than 30 issued since the process began. There are approximately two dozen currently operating within the City. Commissioner Pedersen asked how specific the Special Use permit can be. Mr. Tyson said there are 13 categories with one being the professional office. In the past, City Council has tailored the permit to one of those categories. Mr. Ison added the Commission can make a motion to amend the permit to be more specific, the same as City Council. Commissioner Haun referenced the moderate traffic being different from low volume. Ms. Haynes said the secondary arterials are able to carry the moderate volume of traffic and the impact this office would provide is considered to be low volume. Vice-Chairman Andrews asked if there is a limit to the number of employees they can have in the office. Ms. Haynes said the Commission can limit the number of employees the business can have. She provided information on the parking that would be available onsite.

The public hearing was opened at 7:55 p.m.

Alex Clark, current owner of the property, spoke to the Commission. Mr. Clark said he had concerns at the last meeting and moving forward with this plan limits the use of the property and the access of the property adding if he sells the property, this use will end with him. He feels this will allow better use of the property and protects the neighborhood. Mr. Clark said if he was living in this home, he would be able to operate this business and would not have to apply for this permit. Mr. Clark stated he has an Administrative Assistant that works for him and that would be the only employee other than a couple of people every now and then. Mr. Clark added the biggest thing is this is a great house and he loves the property. They plan to restore it with the home to be brought up to city standards. Commissioner Haun asked the number of employees that would be onsite. Mr. Clark said he would be there and possibly two others.

George North came to the podium to speak. Mr. North said we had several special use permits (6 - 7) during the time he was on the Commission with those normally being Day Care centers with very little noticeable impact. Mr. North mentioned concerns with the signage and a bush on the property that could cause potential site concerns.

Cece Barr, 127 N. Lynn, spoke stating this is a residential neighborhood and is not a commercial neighborhood adding once this is changed to a commercial property, she does not see it being changed back to residential again. She mentioned the parking on the property and asked if he would make an appeal to the Planning and Zoning Commission to make that change. She voiced concern with if this proposal does go forward, it would alter the neighborhood forever.

Vice-Chair Andrews asked a question regarding off street parking or additional parking. Ms. Haynes said if additional parking is needed, staff would consider that off-street parking and it would be evaluated by staff. She mentioned the Commission can include

additional language to the Special Use Permit regarding the parking. Mr. Tyson said if the applicant were to widen the driveway, staff would be conducted the review. If the Commission feels this is a relevant concern, additional language can be added to limit to the current parking, how it has to look, etc.

Public hearing was closed at 8:10 p.m.

**Commission Discussion** - A question was asked concerning changes to the parking. Future changes in parking will be determined by staff administrative review. Questions were asked concerning the signage. Ms. Haynes provided information concerning the size of sign that is allowed by code. A sign permit will be required and the sign will have to meet the distance requirements from the property line.

Motion was made by Tony Mitchell and seconded by Erik Pederson to Recommend the Approval of an Application for a Special Use Permit for a Real Estate Office in a Residential Zoning District, Located at 1101 East Elm Street. Vote was 5 Ayes - Andrews, Haun, Hyder, Mitchell and Pedersen, 0 Nays. Motion carried.

- c. **PDD 18-003. Public Hearing and Possible Vote to Recommend the Approval of an Application to Change the Zoning Classification of Approximately 5 Acres, Located at 139 East Miller Road, from Medium Density Single-Family Residential (R1-M) to Planned Development District.** Karen Haynes provided information regarding the application for rezoning request. This property is located on Miller Road and is surrounded with property zoned the same as this property is currently zoned. Staff and the Technical Review Team met to discuss the proposed rezone and the compliance with the Planned Development District (PDD) regulations. Information was provided on the number of units that will be included with this development. The current structure on the property will be repurposed and used as a clubhouse. There will be one parking space for each dwelling unit. The development does have a deed restriction for only individuals 55 years of age and older to live within the development. This property is surrounded by single-family homes on each side and the development is comparable with the surrounding properties. The property is currently served by city water and sewer service but it will require upgrades to serve forty units. There is sufficient sanitary sewer capacity for this development. Miller Road is classified as a collector street from Hwy. P to Hwy. ZZ. There are approximately 1800 trips per day on this road with the range approximately 1100-6300 daily trips. It is anticipated this development will generate approximately 148 trips per day. There are no identified sinkholes or floodplains on this property.

Vice-Chair Brandon Andrews asked about the trips per day. Ms. Haynes said the City Engineer has reviewed this type of development and feels 148 trips per day is appropriate whereas a single-family residence generates 10 trips per day. Ms. Haynes provided information on the PDD zoning and said until the property owner comes back for another rezone, this zoning will remain in place. Questions were asked concerning the parking available for this development. Ms. Haynes said a single-family home would be two parking spaces per unit double what is planned for this development.

There is a reduction with 55+ drivers and the number of trips to be generated will be less.

Public hearing opened at 8:39 p.m.

Gabe Woodman spoke to the Commission. He provided information on the demographics for this age group and the need for senior housing in this area. Mr. Woodman said this development is compatible with current standards, the development will be subject to the city standards, and the historic facility will remain and be a clubhouse on the property. Commissioner Cynthia Hyder asked about the number of employees at the facility and the number of parking spaces they will need. The question was asked where the staff would park and Mr. Woodman said many of the residents will not have cars but will rely on others to give them rides. There will be one parking space per unit and four additional parking spots at the clubhouse.

Dolph Woodman spoke. He has been a resident for over thirty years and said there has not been a senior development in Republic in over forty years. These individuals are moving to other cities because this type of development does not exist in Republic. Mr. Woodman said the development will have adequate parking available.

Tom Welter, 201 E. Miller Road, spoke against the development. He said he lives near the property on the east side. He has concerns with the parking as he and his wife both have vehicles and knows a lot of couples that each has vehicles. The property is higher than his property. Mr. Welter said he is not looking forward to looking at a building every morning. He was not aware a commercial business could locate within a residential area.

Leslie Forbis, 115 E. Miller Rd., said the traffic on Miller Rd. is unbearable. She feels it is a good thing for Republic but this is not the best location for the development. She voiced concern with the impact to the property values and the number of additional cars on the road.

Nancy Forbis, 540 S. Main, said she has lived her for fifty years. Ms. Forbis mentioned the traffic in the area and said she has had to wait ten minutes to back out of her driveway. She said there is such an influx of vehicles now and voiced concern with the additional vehicles moving into the area. She is worried about the children getting on and off the school bus. She mentioned the Cox Health Center and the number of people that walk/run through the area. She encouraged the Commissioners to think it over before they vote on the issue and to read the city's Vision statement and do the right thing.

Betty North, 733 O'Neal, owns property at 136 Ritter. Mrs. North questioned the FLUM designation of the property. Mrs. North said she considers this to be spot zoning and she said care should be taken on the impact to the area properties. She stated this property is not appropriate for a PDD and the proposed zoning is not consistent with the current Comprehensive Plan. Mrs. North said this rezoning does not conform with the map because you are putting a PDD primarily of apartments in the middle of a

residential neighborhood and that makes it spot zoning and should not be allowed. Mrs. North said she has no problem with land use regarding infill development as long as the infill is compatible with the existing homes. She encouraged members to consider the character of the neighborhood when considering this rezone. Mrs. North said this development is contrary to the purpose as outlined in the current zoning map and it is inappropriate to use PDD. Mrs. North said she feels we do need senior housing but not on this piece of property.

Jennifer Mitchell, 225 E Miller Rd., said as a business owner she sees their vision but does not feel it is an appropriate location. Mrs. Mitchell said there is a very community feel on this road and she anticipates this development will change that feel.

Public hearing closed at 9:21 p.m.

**Commission Discussion** - Vice-Chair Andrews said he wanted to point out the procedures. The Commission bases their decision on facts and evidence provided. There is a City Council meeting at 6:30 p.m. on November 27<sup>th</sup> but there will be no public hearing. The public has the ability to reach out to your City Councilman with questions and concerns regarding this rezone.

Motion was made by Erik Pedersen and seconded by Tony Mitchell to recommend the approval of an application to change the zoning classification of approximately 5 acres, located at 139 East Miller Road, from medium density single-family residential (R1-M) to Planned Development District. Cynthia Hyder asked if she could abstain from the vote. She said it is her first meeting; she was just appointed, there is a lot to this agenda item and she does not feel comfortable voting on this item. City Attorney Scott Ison said an abstention is if you have some type of conflict or another issue that causes you not to be able to vote on the agenda item. The vote was 5 Ayes - Andrews, Haun, Hyder, Mitchell and Pedersen. 0 Nays. Motion carried.

7. **Citizen Participation.** Vice-Chair Brandon Andrews opened the citizen participation at 9:25 p.m. No one came to the podium and the citizen participation was closed at 9:26 p.m.
8. **Community Development Department Update.** Ms. Haynes said in the future, staff will provide information to the Commission regarding cases presented to the Technical Review Team for consideration. Both land use and commercial developments are reviewed by staff. Information was also provided on permits processed and inspections conducted during the month. She asked the Commission to contact her should they have any questions.
9. **Comprehensive Plan Update.** No report was presented at this meeting.

10. **Adjournment.** Motion was made by Kevin Haun and seconded by Erik Pedersen to adjourn the meeting at 9:31 p.m. Vote was 5 Ayes – Andrews, Haun, Hyder, Mitchell and Pedersen. 0 Nays. Motion carried.

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Karen Haynes  
Principal Planner

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Ransom Ellis  
Chairman

DRAFT

**EXHIBIT A**

**Project/Issue Name:** Public Hearing and Possible Vote to Recommend the Approval of an Amendment to Title IV. Land Use, Chapter 405 Zoning Regulations, Section 405.185 “C-O” Commercial Overlay District.

**Submitted By:** Garrett Tyson, Community Development Director

**Presented By:** Community Development Department

**Date:** January 14, 2019

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**ISSUE IDENTIFICATION**

Whether to amend or repeal the Commercial Overlay District regulations.

**DISCUSSION AND ANALYSIS**

Adopted in 2005, the Commercial Overlay District regulates the types of materials that can be used for roofing, building façade, and fencing along the following transportation corridors in the City of Republic:

- US Highway 60
- Oakwood Ave from US Hwy 60 to Hines St
- State Highway 174
- State Highway MM (Brookline Blvd)
- State Highway M (Republic Rd)
- State Highway ZZ (Wilson’s Creek Blvd)
- State Highway P (Main Street)

The regulations prohibit certain materials from being used within the overlay on certain walls and certain locations. The general purpose of the regulations is to preserve the aesthetic appeal and the property values along these corridors.

Since the adoption of these regulations, the application of the requirements has proven to be persistently controversial and difficult. The structure of the format of the regulations has made it difficult for developers and city staff to understand and apply in practice. Some developments have discovered and exploited loopholes in the regulations to avoid the restrictions. Overall, there remain a lot of questions about whether the regulations are effective in accomplishing their stated goal. There are also questions about whether the regulations are legitimate. Some of the controversy surrounding

**EXHIBIT A**

the regulations pertains to whether imposing aesthetic standards is a proper exercise of the City's authority.

As importantly, the regulations impose additional costs on certain developments that are more likely than not to have detrimental economic effects. Given the already questionable nature of the regulations and the absence of evidence that they are effective in achieving the public interest, these unfortunate economic consequences are increasingly difficult to justify.

There are several alternative courses of action the Commission may recommend to the Council in this case.

- A. Do nothing.
- B. Repeal the regulations.
- C. Amend the regulations to give them greater clarity.
- D. Amend the geographic district within which the regulations are applicable.
- E. Amend the zoning districts within which the regulations are applicable.

**STAFF RECOMMENDATION**

Staff recommends the repeal of the Commercial Overlay District regulations.

## MEMORANDUM



**To:** David Cameron, City Administrator; Scott Ison, City Attorney  
**From:** Garrett Tyson, Community Development Director  
**Date:** Monday December 3, 2018  
**Re:** **Commercial Overlay District - Evaluation and Recommendation**  
**Cc:** Karen Haynes, Principal Planner

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This memorandum contains a brief policy evaluation of the City's current Commercial Overlay District regulations as well as a recommendation for policy succession.

### Background

The City's Commercial Overlay District regulations were first proposed in 2003 and were finally adopted in 2005. A thorough review of the record concerning the development of these regulations reveals that the primary problem identified by staff was the potential for "big box" or large, national corporations to come into town, so to speak, and diminish the visual appeal of the community with what were anticipated to be large, unappealing buildings. The staff at the time lauded their ability to negotiate with Wal-Mart to paint their building with earth-tones rather than their typical grey and blue color scheme. The regulations were designed as a means to replicate that success throughout all of the City's major corridors. The record also reveals that there was only tepid support for this amendment, at best, and concerns and opposition were expressed throughout the process. Still, the regulations were finally adopted in November 2005 and have not been subsequently amended.

Throughout the course of the existence of these regulations, their enforcement has consistently been a source of contention and controversy. Interestingly, the types of large corporate businesses that the City staff originally suspected would require the enforcement of these regulations are the businesses that have had the least problem complying with the requirements. Instead, the regulations have had the most consequential impact on smaller, local businesses or businesses for which "roadside appeal" is not as functionally important (i.e. warehousing, manufacturing, wholesaling, etc.). The result of this is that the regulations have imposed the greatest costs on those businesses who can least afford it.

The regulations have also proven controversial due to the structure and content of the provisions themselves. The regulations are structured with several lists of building façade materials. There is a list that is strictly prohibited, a list that is "allowable", and a list that is "allowable" on only certain façades or under certain conditions. There is then a subsequent section that provides for a special administrative approval of other "quality" materials that are not on any of the aforementioned list, but what constitutes "quality" in this context is undefined and left purely to administrative discretion. Furthermore, the lists of materials frequently employ brand names or proprietary product descriptions that are, in some cases, already obsolete.

The final important source of controversy surrounding these regulations is whether restrictions on building materials actually result in more aesthetically pleasing buildings. In 2012, the City held a series of focused meetings with architects and real estate professionals concerning the overlay requirements. While the group seemed to understand the supposed rationale underlying the regulation (i.e. that aesthetically pleasing buildings protect property values), there was not consensus about how to actually accomplish that goal through regulating building façades. Several of the architects in the group raised concerns that the City's existing regulations would actually have the unintended effect of discouraging creative and unique building designs.

As a result of this controversy, many businesses have sought to evade the overlay requirements by exploiting loopholes and ambiguities in the regulations. Industrial developers along the State Highway MM corridor discovered early on that the regulations were only applicable to the parcels "adjoining" the ROW of the state highway. In order to avoid the overlay requirements, these businesses created small parcels between their building and the ROW. The result has been a successful circumvention of the overlay requirements. Along the other corridors, some developers sought to layout their development such that buildings were located behind another building in order to evade the requirements. In several cases the developers provided site plans that showed a future phase of development with frontage buildings that would comply with the overlay requirements in order to proceed to build other buildings that would not comply. These evasive tactics have been prevalent, successful, and have not generated complaint or concern from the community-at-large.

The Ashley Furniture warehouse building located at the southwest corner of the intersection of State Highway MM and Kings Street in the Brookline Business Park does not comply with the overlay requirements because they created a very small parcel between their building and the ROW. They now need to expand their building which requires them to dissolve that parcel and subject their expansion project to the overlay requirements. The question was raised as to whether the overlay requirements would apply to the entire building or only to the addition. The regulations state that building additions shall employ the same façade material as the existing portion of the building unless that material is prohibited. In the case of Ashley Furniture, the material used on the existing façade is a prohibited material. The resulting dilemma is that if the overlay requirements are imposed on the entire building the costs imposed on the business would be enormous while only requiring compliance for the added building façade would run afoul of the intent of the regulations to provide for a continuity of the building façade. Despite staff's decision to interpret the regulation in the more liberal fashion, the business still disputed whether the requirements provided any benefit to the community for what, to them, seems to be excessive costs for little or no benefit in return.

### Analysis

The City of Republic's overlay district regulations require that a building comply with specific requirements pertaining to the types of materials that are used on the building's façade. The stated purpose of these regulations is to "enhance visual appearance" and to "preserve the value of properties" wherein the regulations apply.

These overlay district regulations are distinguishable from other zoning regulations in the City's zoning code in that they are quite obviously primarily aesthetically-driven regulations. One common way to test whether a regulation is primarily aesthetically-driven is to apply what is known as a "blind simulation" test. If the condition is offensive to a person with sight but is not offensive to a similarly situated blind person, then the offense is primarily aesthetically-driven. That the overlay district regulations are distinct in this way is important to this analysis because aesthetically-driven regulations are uniquely controversial.

The most obvious controversy surrounding aesthetically-driven regulations are whether, in fact, aesthetic qualities can be objectively defined. For centuries, it has been commonly believed that aesthetic qualities, often referred to as beauty, are something that cannot be subjected to reasoned argument because aesthetic preferences differ from person to person. Despite this, modern proponents of aesthetically-driven regulations hold that a majority of citizens should be allowed to impose aesthetic standards upon the whole community for a variety of reasons and purposes. Typically listed among these reasons are the preservation of beautiful surroundings for future generations, the protection of property values, the fostering of a more culturally mature society, and protection against the anxieties that are thought to be induced by ugliness.

What matters most to this analysis is whether aesthetically-driven regulations, like the City of Republic's overlay district regulations, are legitimate and effective.

Because the City's overlay district regulations are primarily aesthetically-driven, it is questionable whether they fall soundly within the scope of police powers of the state. The City's overlay district regulations explicitly state that the purpose of the regulations is to protect property values, a policy goal ostensibly encompassed within the police powers because of its supposed relationship to the "general welfare". While many courts will uphold aesthetically-driven regulations simply because the legislature declares a belief that such regulations promote the general welfare, this contemporary jurisprudence need not dictate our own determination about whether these regulations are legitimate. Such a deferential form of judicial restraint merely concerns the evaluator with what the target is and not whether the target is actually hit. Our vision, mission, and core values compel us to be concerned not only with what we are aiming at, but also whether we are hitting it.

With regard to whether aesthetics is a proper policy aim, such regulation is suspect not only for its tenuous-at-best connection to the general welfare but also for its effects on freedom of expression and rights to real property. In recent decades, challenges to aesthetically-driven regulations have increasingly involved arguments that this so-called "legislated beauty" violates personal freedom of expression protected by the 1<sup>st</sup> Amendment. While these challenges have typically involved the regulation of signage, there are also arguments concerning regulation of building construction for aesthetic purposes as well. While the City of Republic's overlay district regulations do not regulate the shape, size or color of buildings, they do restrict the types of materials that can be utilized and this has often clashed with the desires of businesses who intend to use those buildings. For instance, some corporate or franchised businesses are required to have a certain appearance that has been decided by

the corporation to best represent their business and, as such, that appearance does convey a message to an audience (i.e. prospective customers). In Republic, the Macadoodles building proposed to use a type of wood siding that matched their branding as a sort of antique liquor store. This project struggled for weeks to get approval from City staff for the façade material that they desired for their “look”. Businesses that incorporate their branding and unique style into their architecture are not abnormal and such behavior is undoubtedly a significant part of their overall marketing plan (and, by extension, their overall business strategy). From this perspective, restriction of a businesses’ ability to express their branding and style is questionable.

Aesthetically-driven regulations have also been subject to scrutiny by the courts for potential violations of a property owner’s right to use their property and to be free from governmental takings without compensation, as guaranteed by the 5<sup>th</sup> Amendment. There is no doubt that the City of Republic’s overlay district regulations impose substantial additional costs on buildings constructed within the overlay. It is frequently claimed by property owners within the overlay district that these additional costs have been a deciding factor in whether certain development proposals may be realized. I believe the City would be hard pressed to demonstrate that the lack of conformity to the overlay district regulations constitutes a nuisance in and of itself. Regardless, the purpose of this particular discussion is to present the controversy surrounding the regulation and not to render an opinion as to whether these regulations actually amount to a taking.

Returning to the idea that the City should not only be concerned with having a proper aim, but also with whether the target is being hit, one must review whether there is any evidence that the City’s overlay district regulations are effective in achieving the stated policy goals. A cursory review of the situation reveals several enlightening anecdotes about the effectiveness of the regulations. The existence of several buildings within the City and within the overlay district that many people would consider to be unsightly that *do* comply with the overlay district requirements seems to weaken the argument that certain building façade materials will protect property values. Likewise, there are also buildings within the overlay district that *do not* conform to the overlay district regulations and that are often mentioned among some of the community’s greatest assets. That several businesses have been able to circumvent the overlay district regulations without complaint or concern over the course of several years also seems to weaken the argument that building façade regulations are effective in achieving the stated goals. Furthermore, it is noteworthy that the City of Republic is the only municipality in the Springfield-area that has building façade requirements and, yet, the other major corridors throughout the region do not seem to be suffering from the lack of such regulation while Republic’s corridors are somehow advantaged by having them.

Of equal importance is consideration of economic consequences of these regulations. When one considers that property values, when expressed in terms of prices, inherently contain information about the aesthetic preferences of potential buyers then it follows that the market is exacting a cost for aesthetic “sins”, so to speak, in a manner far more democratic than a legislated outcome. As such, aesthetically-driven regulations have a high probability of inefficiently allocating scarce resources toward certain façade materials and construction methods that would otherwise be more efficiently

allocated toward other more productive pursuits. To borrow the example that has largely precipitated this evaluation, consider the tens of thousands of dollars that the City would otherwise force to be allocated to “decorating” the exterior of the added portion of the Ashley Furniture warehouse. The market would obviously allocate this substantial amount of money to far more productive means but for the City’s overlay district requirements. The opportunity costs and potential waste that are the consequence of this specific regulation are substantial and important to the City’s economic development efforts.

### Recommendation

While there is a certain appeal to the concept of protecting property values by attempting to regulate the appearance of buildings along highly traveled corridors in the City, this analysis finds that not only is this a questionable use of the City’s police power authority but it is also highly questionable as to whether these regulations actually achieve their stated purpose.

Following a thorough consideration of a variety of alternatives, I recommend the repeal of the overlay district regulations on account of their questionable legitimacy and lack of evidence of their effectiveness. It is my opinion that this recommendation will aid us in fulfilling our vision, accomplishing our mission, and exemplifying our core values. It is also my opinion that the repeal of these regulations will further the City’s economic development efforts by allowing a more efficient allocation of resources and by encouraging more investment in real property.

Because my recommendation is for a complete repeal of the regulation, I am also planning to put forth a couple of other alternatives that would improve the regulations without repealing them entirely. These alternative solutions will only contain a list of materials that are prohibited and will avoid using brand names. One alternative will eliminate the overlay district’s applicability upon industrial zoning along the State Highway MM corridor, as has been previously suggested.

### **ALTERNATIVE V3**

Section 405.185 "C-O" Commercial Overlay District.

[Ord. No. 05-83 §1, 11-14-2005]

- A. *Purpose.* To enhance the visual appearance and to preserve the value of properties along U.S. Highway 60, Missouri State Highway 174, Missouri State Highway M, Missouri State Highway MM, Main Street, Missouri State Highway P and Oakwood Avenue, the City's primary commercial corridors, this Section has been established to protect, preserve and enhance the visual and architectural appearance of the parcels and structures along these corridors within the City of Republic.
- B. *Applicability.* The standards of this Section shall apply to all real property located within three hundred (300) feet from the centerline of U.S. Highway 60 and all real property adjoining Missouri State Highway 174, ~~Missouri State Highway M~~, Missouri State Highway MM, Main Street, Missouri State Highway P and Oakwood Avenue from Highway 60 to Hines Street, or actual depth of such property, whichever is greater. Any property on which a commercial or multi-family complex is planned, only the buildings that are constructed immediately adjacent to the street right-of-way line shall comply with the Commercial Overlay District regulations. Any properties that are annexed into the City and meet the above applicability will be included in the Commercial Overlay District. The following properties and uses shall be exempt from the standards of this Section:
1. Properties zoned "AG", "R1-H", "R1-M", "R1-L", "R1-Z" and "R-2".
  2. Improvements or repairs to existing buildings that do not result in an increase in floor area.
- C. *Building Design Regulations.*
1. *Material standards.*
    - a. The following materials are prohibited from use as an exterior building finish on all exterior walls:
      - (1) Exposed plywood siding;
      - (2) Exposed horizontal and vertical aluminum siding;
      - (3) Exposed asphalt shingle siding;
      - (4) Exposed asphalt shingle roofing — non-architectural; and
      - (5) Exposed galvanized chain link fencing.
    - b. The following exterior finish materials shall be allowed on the rear exterior wall of the building unless the rear exterior wall faces a local commercial street, collector street or arterial street right-of-way:
      - (1) Exposed concrete masonry units (CMU) standard gray block;

(2) Concrete finishes or precast concrete panels (such as tilt-up walls) that are exposed aggregate, hammered or sandblasted and are unable to be painted;

(3) Corrugated metal siding;

(4) Exposed vinyl siding (.044 inch gauge or greater).

e. ~~The following exterior finish materials shall be allowed on all exterior walls of the building:~~

~~(1) Customary brick masonry;~~

~~(2) Natural or cast stone;~~

~~(3) Oversized brick;~~

~~(4) Split faced block;~~

~~(5) Dryvit, stucco or EIFS (exterior insulated finish);~~

~~(6) Architectural precast concrete;~~

~~(7) Architectural, metal panel systems such as Alucobond;~~

~~(8) Transparent glass curtain wall and storefront systems such as Kawneer, EFCO, Visionwall and reflective glass;~~

~~(9) Accent materials such as glass block and ceramic tiles.~~

d. ~~The following roofing finish materials shall be allowed on the roof, awnings and overhangs:~~

~~(1) Metal roofing including standing seam, copper;~~

~~(2) Natural or composite slate roofing;~~

~~(3) Real or composite terra cotta tile roofing;~~

~~(4) Wood shake roofing;~~

~~(5) Architectural shingle roofing material.~~

e. The use of galvanized chain link fencing shall be prohibited. The use of vinyl coated chain link fencing shall be allowed in green, black and brown. No fencing shall be allowed in the front yard of the building. The fencing shall be constructed perpendicular to the building beginning twenty (20) feet behind the front edge of the building.

f. Existing buildings that are being enlarged or structurally altered must

use the same building exterior finishes that are on the existing structure, as long as the proposed exterior finish materials are not from the list of prohibited materials in Subsection (C)(1)(a) above.

~~g. There may be quality exterior finish materials and fencing that are not listed in this Section and that may be used upon approval of the Community Development Department. The owner and/or architect may request the use of such materials that are not listed as prohibited or allowed in this Section at the time an application for a building permit is submitted. The Community Development Department shall review the requested material in accordance with the review procedure in this Section and determine if the material is allowed to be used. [Ord. No. 16-23 § 1, 11-28-2016]~~

D. *Review And Approval Required.* Except as provided in this Section, the review and approval of the Community Development Department shall be required prior to the issuance of any permit for the erection, construction, conversion, relocation or enlargement of or for any exterior structural alteration to any of the following: [Ord. No. 16-23 § 1, 11-28-2016]

- ~~1. Commercial, industrial, institutional or other non-residential uses; or~~
- ~~2. Multi-family dwellings containing more than two (2) units; or~~
- ~~3. Accessory structures containing two hundred fifty (250) square feet or more of gross floor area.~~

~~E. *Submittal Requirements.* Application for review and approval under this Article shall be made to the Community Development Department as part of the building permit application. Detailed building exterior renderings shall be required and approved for all projects requiring a commercial or multi-family building permit as set forth in the Municipal Code and the zoning ordinance. In addition to the submittal requirements for a commercial or multi-family project, all building exterior renderings submitted for approval shall contain or have attached thereto the following information: [Ord. No. 16-23 § 1, 11-28-2016]~~

- ~~1. A complete wall elevation scaled at no less than one (1) inch equals twenty (20) feet of every side of the building including front, sides and rear. For structures not defined by a specific wall plane, the Community Development Director shall determine the information required.~~
- ~~2. Two (2) cross sections of the site and building at a scale no less than one (1) inch equals twenty (20) feet.~~
- ~~3. A colored detailed wall elevation at a scale of one (1) inch equals ten (10) feet depicting a wall plane of the building materials used.~~
- ~~4. An exterior building finish materials list, a table identifying each exterior building finish material used, the area per building plane and percentage of exterior finish material used per building plane.~~

5. ~~A title block indicating the preparer, property owner, date, scale and north arrow.~~
6. ~~An electronic file of the building exterior renderings.~~
7. ~~The applicant is encouraged to provide the City with any other forms of graphic material which would help portray the concept of the design.~~

F. ~~Review Procedure. [Ord. No. 16-23 § 1, 11-28-2016]~~

1. ~~Upon receipt of the building permit application, the Community Development Department shall promptly review the application for completeness in accordance with requirements of this Article and within ten (10) business days of such receipt shall advise the applicant of any deficiencies.~~
2. ~~In approving the building permit application under this Article, the Community Development Department may impose conditions and restrictions on the approval so long as the Community Development Department specifically finds that the conditions set forth in this Section have been satisfied.~~

G. *Appeals From Granting Or Denial Of Permit.* Appeals from the granting or denial of a building permit by the Community Development Department shall be to the Board of Adjustment as is in such cases provided by law. [Ord. No. 16-23 § 1, 11-28-2016]



## RESIDENTIAL BUILDING & INSPECTION PROJECT REPORT JANUARY-DECEMBER 2018

### New Single-Family Residential Building Permits

January 2018: 24  
February 2018: 6  
March 2018: 5  
April 2018: 1  
May 2018: 16  
June 2018: 21  
July 2018: 5  
August 2018: 15  
September 2018: 2  
October 2018: 7  
November 2018: 1  
December 2018: 3  
**TOTAL: 106**

### Building Inspections

	Residential Inspections	Commercial Inspections
January 2018	54	8
February 2018	78	9
March 2018	82	8
April 2018	82	24
May 2018	85	15
June 2018	78	9
July 2018	108	4
August 2018	100	15
September 2018	75	10
October 2018	83	21
November 2018	64	15
December 2018	59	17
<b>TOTAL</b>	<b>948</b>	<b>155</b>



## **TECHNICAL REVIEW TEAM PROJECT STATUS REPORT** **JANUARY-DECEMBER 2018**

Black: Project Complete

Green: Under Construction

Purple: Pending Commission/Council

Red: Pending Permit Pickup

Blue: Pending Submittal/In Review

### **COMMERCIAL DEVELOPMENT PROJECTS STATUS**

COM 18-001 Rankin Development Foundation: Complete

COM 18-002 Wildwood Plaza: Construction

COM 18-003 Watson Metal Masters: Complete

COM 18-004 Infinium Pharmacy Infill: Complete

COM 18-005 Rankin Development Building: Complete

COM 18-006 Watson Metal Masters Building: Complete

COM 18-007 Taco Bell Remodel: Complete

COM 18-008 CU Land Clearing: Complete

COM 18-009 New Life Church Infill: Complete

COM 18-010 Jimmy's Egg & Retail Center: Pending Permit Pickup

COM 18-011 Old Stone Apartments Phase 3: Construction

COM 18-012 Mercy Clinic Remodel: Complete

COM 18-013 Pinewood Storage: Application Expired

COM 18-014 Magellan Upgrades & Addition: Complete

COM 18-015 Rankin Development Infill: Complete

COM 18-016 Rankin Development Addition: Complete

COM 18-017 Red Monkey Parking Addition: Complete

COM 18-018 Republic Palms Apartments: Construction

COM 18-019 Panda Express: Construction

COM 18-020 Garton Stormwater Improvements: Pending Permit Pickup

COM 18-021 Allstate Infill: Complete

COM 18-022 Town Center White Box: Complete

COM 18-023 Calvary Baptist Church Education Center: Construction

COM 18-024 Elliot Robinson Infill: Complete

COM 18-025 City Hall Renovation: Construction

COM 18-026 Branco: Pending Final Submittal

COM 18-027 Garton 3:

Site Grading/Civil: Construction

Building Shell: Pending Final Submittal

COM 18-028 Speedy's Carwash: Construction

COM 18-029 OTC: Pending Final Submittal

### **LAND USE CASES STATUS**

#### **Rezoning**

RZN 18-001 Branco (AG to C-3): Approved

RZN 18-002 649 East Elm (R1-M to C-1): Approved

RZN 18-003 McConnell (AG to C-2): Approved

RZN 18-004 Turner (AG to R1-H): Approved

RZN 18-005 MARF (AG to R1-M): Approved

RZN 18-006 Jones-Pulley (AG to C-2): Approved



RZN 18-007 1101 East Elm (R1-M to C-O): Not Approved

**Planned Development Districts**

PDD 18-001 The Trails at Valley Park: Approved

PDD 18-002 A'Vila: Withdrawn

PDD 18-003 Miller PDD: Approved

**Special Use Permits**

SU 18-001 1101 East Elm Street: Pending Council Decision

**SUBDIVISIONS/INFRASTRUCTURE PERMITS**

Monte Cristo Phase 3 Final Plat: Approved

SUB 07-004 Frisco Square Phase 3 Final Plat: Approved

SUB 18-001 Monte Cristo Phase 4 Infrastructure Permit: Complete

SUB 18-002 Monte Cristo Phase 5 Infrastructure Permit: Complete

SUB 18-001 Monte Cristo Phase 4 Final Plat: Pending Council Approval

SUB 18-002 Monte Cristo Phase 5 Final Plat: Approved

SUB 18-003 Highway 60 Business Park Preliminary Plat: Denied

SUB 18-004 The Trails at Valley Park Phase 1 Infrastructure Permit: Construction

SUB 18-005 The Trails at Valley Park Phase 2 Infrastructure Permit: Pending State Permits

SUB 18-006 Forest Lane Infrastructure Permit: Complete

SUB 18-007 Trogden Industrial Infrastructure Permit: Construction

**MINOR SUBDIVISIONS**

MSL 18-001 Laborde Replat: Pending

MSL 18-002 LeCox Replat: Complete

MSL 18-003 101 Mill Street Minor Subdivision: Complete

MSL 18-004 Blades Replat: Complete

MSL 18-005 Hill Replat: Complete

MSL 18-006 Medlin Replat: Complete

MSL 18-007 Red Monkey Replat: Complete

MSL 18-008 Scobee Replat: Complete

MSL 18-009 Forest Lane Replat: Complete

MSL 18-010 Hicks Minor Subdivision: Complete

**ROW VACATIONS/ACCEPTANCES**

ROW 18-001 Laborde: Complete

ROW 18-002 Miller Crossing: Complete

ROW 18-003 Farm Road 107: Withdrawn

ROW 18-004 Forest Lane: Withdrawn

**ORDINANCES**

Off-Street Parking Ordinance: Approved

PDD Ordinance: Approved

Food Truck Ordinance: Pending Staff Research

Microbrewery/Distilleries: Pending Staff Research

Commercial Overlay District Ordinance: Pending P&Z/Council