

# CITY OF LITCHFIELD PARK

## PLANNING AND ZONING COMMISSION

Regular Meeting  
Tuesday, April 13, 2021  
7 p.m.

Virtual Meeting

Watch on You Tube via the following link:

<https://youtu.be/ivTqMetj4Fs>

IN-PERSON ATTENDANCE AT PUBLIC MEETINGS HAS BEEN SUSPENDED UNTIL FURTHER NOTICE. NOTICE IS HEREBY GIVEN PURSUANT TO A.R.S. §38-431.02 THAT MEMBERS OF THE PLANNING AND ZONING COMMISSION WILL ATTEND BY AUDIO/VIDEO CONFERENCE CALL.

### I. Call to Order

THIS MEETING WILL BE HELD BY REMOTE PARTICIPATION. CALL TO THE COMMUNITY WILL NOT BE HELD.

#### 1. Zoom Conference

a. Computer: <https://us02web.zoom.us/j/84340228721> Meeting ID: 843 4022 8721

b. Telephone: 1 669 900 6833 or 1 253 215 8782 Meeting ID: 843 4022 8721

### II. Business

#### A. Oath of Office

Information

Administer the Oath of Office to Vice Chair Faith and Commissioners Darre, Fraser, Ledyard and O'Connor who were appointed/reappointed at the March 17, 2021 Council meeting.

#### B. Introduction of New Commissioner Andrew Fraser

Information

Introduction of new Commissioner Andrew Fraser who was appointed at the March 17, 2021 City Council meeting.

#### C. Election of Officers

Information  
Action

Election of Chair and Vice Chair to serve the 2021/2022 term.

#### D. Appointment of a Representative to the Design Review Board/Board of Adjustment

Information  
Action

Appointment of a Commission Representative to serve on the Design Review Board/Board of Adjustment for the 2021/2022 term.

#### E. Set Meeting Schedule

Information  
Action

Set meeting dates for the upcoming year per City of Litchfield Park Zoning Code Section 3.01.d.1. Regular Meetings.

#### F. Zoning Code Update

Information

Review, discussion, and possible direction to Staff regarding the ongoing Zoning Code review and update, including Section 31.03 Accessory Uses and Structures.

#### G. Design Review Board/Board of Adjustment Update

Information

Update on the Design Review Board/Board of Adjustment meetings held on March 4, 2021.

**H. Topics for Referral to City Council**

**Action**

Discussion of and possible referral of new topics to the City Council.

**I. Minutes**

**Information  
Action**

Possible approval of the minutes of the March 9, 2021 Meeting.

**III. Staff Report on Current Events**

**Information**

This is the time Staff may present a brief summary on current events. The Commission may not propose, discuss, deliberate or take any legal action on the information presented, pursuant to A.R.S. § 38-431.02.

**IV. Commissioners' Reports on Current Events**

**Information**

This is the time Commissioners may present a brief summary on current events. The Commission may not propose, discuss, deliberate or take any legal action on the information presented, pursuant to A.R.S. § 38-431.02.

**V. Adjournment**

**Action**

Michael Faith, Vice Chair

Persons with special accessibility needs should contact City Hall, 623 935-5033 at least 48 hours prior to the meeting.

## Litchfield Park Zoning Code

### Section 31.03 Accessory Uses and Structures

#### **a. General**

##### **1. Accessory Structures Permitted**

Accessory structures are permitted only as provided in this section.

##### **2. Construction**

No accessory structure shall be constructed upon a lot until the construction of the principal building has commenced.

- 3.** All activity (except required on-site parking, loading or unloading) including incidental or accessory storage and display area shall be within a completely enclosed building, unless specifically noted herein.

#### **b. Uses**

1. Storage accessory structures shall be used solely for storage uses.
2. Habitable accessory buildings shall only be used (A) for a guesthouse to be used by family, owner's domestic help or temporary guests of the owner or lessee of the principal building, (B) for noncommercial workshops or (C) for pool cabanas. Guesthouses shall have on-site parking, shall not be leased separately from the principal building, shall not have separate utility connections, and shall not have cooking facilities.
3. Accessory structures other than habitable accessory structures shall not contain toilets.

#### **c. Location**

Habitable accessory structures are permitted only in single-family residential districts. Other accessory structures are permitted in all districts, subject to requirements of this subsection and requirements applicable to the zoning district in which the accessory structure is located.

#### **d. Setbacks**

1. Except as otherwise provided in subsections (d)(2) through (8) of this section, accessory structures shall be located between the rear property line and the principal building and shall be set back at least five feet from the rear and side property lines and at least ten feet from the principal building.
2. Screened accessory structures one hundred twenty square feet or less in size may have a zero setback.
3. Accessory structures with a height greater than the height of an opaque perimeter fence but ten feet in height or less shall be set back from property lines at least five feet.
4. Accessory structures more than ten feet in height shall be set back from property lines five feet plus one foot for every foot of height over ten feet (step back).
5. For corner lots, accessory structures shall be set back the required side street setback distance.

6. Storage accessory structures used as a garage and located on an alley shall be set back not less than four feet from the rear property line and are not subject to step back requirements in subsection (d)(4) of this section.
7. Shade accessory structures other than tents may be located between the side setback line and the principal building and when located as such shall comply with the setback requirements for the principal building.
8. Guesthouses may be located in the area between the side yard setback line and the principal building and between the front yard setback line and the principal building and when located as such shall comply with the setback requirements for the principal building.
9. Rear setbacks on properties with side yard view fences shall be equal to or greater than the length of the view fence portion of the side yard wall.

**e. Height**

Accessory structures shall not exceed the height of the principal building or fifteen feet in height, whichever is less.

**f. Lot Coverage; Size**

No accessory structure or combination of structures shall occupy more than twenty-five percent of the area lying between the rear of the principal building and the rear property line or exceed five hundred square feet in area, whichever is less. No accessory structure shall cause the maximum lot coverage applicable to the lot to be exceeded.

**g. Architecture**

Design of accessory structures shall be compatible with the principal building with respect to color, materials and form. Accessory structures except for screened accessory structures shall be subject to design review board approval.

**h. Building Permit**

A building permit is required for all habitable accessory structures and all other accessory structures occupying one hundred twenty square feet or more. (Ord. 13-188 § 1; Ord. 11-163 § 1)

## DESIGN REVIEW BOARD/BOARD OF ADJUSTMENT UPDATE

The following items were acted on at the March 4, 2021 Board of Adjustment and Design Review Board Meetings:

### Design Review Board:

- ❖ **268 Laguna Drive West**: The Board of Adjustment had previously approved a variance to allow a second story addition on the home at this location, and the applicant was now seeking design review approval for the design plans. It was noted that the applicant had attempted to match the other two-story buildings in the neighborhood while tying into the existing home's architectural elements, and that a tile roof was proposed over the second floor balcony that will overlook the front courtyard. It was also pointed out that the applicant had neglected to add the 240 square foot covered patio to the lot coverage calculation, but that the addition would not put the lot coverage over the maximum allowed. The application was approved with the condition that all colors, building materials, and finishes shall match the existing residence except as modified by the exhibits provided with the application.
- ❖ **4792 N. Barranco**: This applicant was seeking design approval for a small addition to the front of the home for an ADA accessible suite. Staff noted that the stone veneer on the existing front elevation is not currently on the front of the residence where the addition is proposed, nor was it being proposed for the extension toward the street. It was pointed out that the proposed gable end would create a valley which might make it difficult for drainage. The applicant noted that the veneer was not added to keep the design as close to the original as possible, and that he was not opposed to changing the gable to a hip. The application was approved with the condition that the gable end was to be converted to a hip and that the colors, materials, and finishes are to match those of the existing residence.
- ❖ **204 Campbell Avenue**: The design plans for an addition to accommodate a master bedroom and bath were the subject of this application. The small addition would be located on the front facing portion of the residence, but would be partially obscured from the street view by its location near the existing side-turn garage. The application was approved with the condition that all colors, building materials, and finishes are to match those of the existing residence.
- ❖ **520 Cascada Drive**: The plans for a solar installation on the front facing pitched roof and the rear patio flat roof were reviewed. The panels on the flat roof would be pitched up over 2' tall and would not be screened from view. After discussion with suggestions made regarding how to mitigate the look of the pitched up panels on the flat roof, the application was tabled to the next meeting with the caveat that, if the applicant could make the revisions discussed at the meeting, Staff could approve the application. If not, the application was to come back before the Board.
- ❖ **241 Laguna Drive East**: This applicant was seeking approval for pitched up panels on the flat roof of the residence. There is an existing parapet wall surrounding the roof; however, the parapet wall was not high enough to completely screen the panels. After discussion regarding

the location and layout of the panels on the roof, the application was approved subject to the exhibits provided and with the condition that all wiring and conduit are to be concealed.

- ❖ **Proposed Policy Regarding for Design Review Board Approval for Solar Panel on Flat Roofs:** The Board discussed a policy proposed by a Boardmember that would provide criteria for whether tilted panels on flat roofs would be visible from the street and/or neighboring properties. The Board approved allowing Staff to use this policy to review these types of applications and to administratively approve those applications that met the policy criteria rather than bringing the applications before the Board.

**Board of Adjustment:**

**605 E. Bird Lane:** This applicant was seeking a variance to allow a garage addition to encroach approximately 6.5 feet into the required 15 foot side yard setback. The variance was approved based on the Board's findings that affirmative answers could be provided for the four conditions required to grant a variance.

**MINUTES OF THE SPECIAL MEETING  
OF THE LITCHFIELD PARK PLANNING AND ZONING COMMISSION  
March 9, 2021**

**I. Call to Order**

The meeting was held online via Zoom.

Members Present: Chair Ross (arrived 7:10), and Commissioners Alvey, Darre, Lawrence, Ledyard; and O'Connor.

Members Absent: Vice Chair Faith.

Staff Present: Jason Sanks, Planning Consultant; Pamela Maslowski, Director of Planning Services; and Stephanie Irwin, Accounting Specialist.

Chairman Ross had not yet joined the meeting and Vice Chair Faith was unable to attend.

Commissioner Lawrence **moved** to appoint Boardmember O'Connor as Chair Pro Tem and Boardmember Darre **seconded**. There was **unanimous approval**.

Chair pro tem O'Connor called the meeting to order at 7:07 p.m., and chaired the remainder of the meeting.

**II. Business**

Chair Pro Tem O'Connor opened the Public Hearing.

**A. Public Hearing: Proposed Zoning Code Text Amendment Related to Regulating Recreational Marijuana**

**1. Staff Report:**

Mr. Sanks stated that on October 29, 2021, City Council gave direction to the City Attorney to process a proposed ordinance regarding recreational marijuana in response to Proposition 207 which had been approved by the voters. Proposition 207 allows recreational marijuana use under certain circumstances. Council's direction for the proposed ordinance was that the standards applicable to recreational marijuana would be the same as the standards the City has set for medical marijuana. Under the proposed ordinance, licenses or permits for recreational marijuana would not be limited to dual licensees (holders of medical marijuana certificates and recreational marijuana licenses/permits). However, the regulations related to site location, hours of operation, and other items currently regulated by the City for medical marijuana would be the same for recreational marijuana. The proposed ordinance was brought to the Commission at their January meeting for a Citizen Review Study Session. The text of the proposed ordinance has been unchanged since it was reviewed. However, there were a number of comments and questions brought up at the Citizen Review Study Session to which he had responded. Staff brought those comments, questions, and answers to the City Attorney for review and clarification.

Mr. Sanks reviewed the questions/comments from the previous meeting, including his responses at that meeting, and also further clarification from Staff and the City Attorney:

- Question: Where in the City could a facility could be located?
  - Mr. Sanks' Response: A recreational marijuana facility would be allowed to locate in the same locations that medical marijuana facilities are allowed, which is an Industrial zoned district. At this time, the only Industrial zoned property in the City is at the southwest corner of Camelback and El Mirage Roads, where the Monument Point Center is located.
  - Further Clarification: Mr. Sanks displayed a copy of the zoning map and indicated the area that has Industrial Zoning at the southwest corner of Camelback and El Mirage Roads.
  
- Question: Why is the term primary residence used, such as in Section b, Paragraph 5, "Regulations for Primary Residence for Personal Use", as there could be a secondary or vacation residence?
  - Mr. Sanks' Response: It means a private home.
  - City Attorney Clarification: The term "primary residence" is used in the State statute, which is why the same term is used in the proposed text amendment. Specifically, A.R.S. § 36-2852(A)(2) states: "Possessing, transporting, cultivating or processing not more than six marijuana plants for personal use at the individual's primary residence, and possessing, processing and manufacturing by manual or mechanical means, including sieving or ice water separation but excluding chemical extraction or chemical synthesis, the marijuana produced by the plants on the premises where the marijuana plants were grown if all of the following apply." It is likely this term was used to avoid a situation where an individual has multiple residences and attempts to grow more than the allowed six plants. It is suggested that this term remain unchanged and remain consistent with the language used in the Statute.
  
- Question: Can recreational marijuana be sold in another type of establishment such as a retail establishment, or will it be limited to the type of facility noted in the ordinance?
  - Mr. Sanks' Response: A business license would be required which would have to go through a zoning clearance process making sure it would only be allowed in areas with Industrial zoning. It would have to be a licensed facility used specifically for the sale of marijuana.
  - Clarification from City Attorney: Under the Statute, recreational marijuana can only be sold at an authorized "marijuana establishment," which must be licensed through the State – thus, the sale of recreational marijuana is not allowed at other retail establishments.
  
- Question: Who decides on the penalties?
  - Mr. Sanks' Response: It would have to be determined if it was a City Zoning Code violation or a violation of State Law. If it is a violation of the Zoning Code, those penalties are already in place.
  - City Attorney Clarification: Mr. Estes agreed with this answer. The direction from the City Council is that the regulations for recreational marijuana not be stricter than those for medical marijuana.

- Question: Will the facility be allowed to be open seven days a week?
  - Mr. Sanks' Response: The facilities would be allowed to be open 8 a.m. to 7 p.m., and there are no restrictions regarding the number of days it may be open. Other jurisdictions have limited the days a medicinal marijuana establishment may operate (for example Monday through Friday 9:00 a.m. to 5:00 p.m.) and those similar type of restrictions can be adopted in the City, but would need to be consistent for both medicinal marijuana and recreational marijuana establishments.
  - Clarification from the City Attorney: Mr. Estes had no further comments on this.
  - Mr. Sanks added that, if the Commission wanted to change the hours or days of operation, there would need to be an amendment for the medical marijuana hours of operation.
  
- Question: Could the secured storage space have an 8' fence with barbed wire on top?
  - Mr. Sanks Response: He believes that barbed wire is not allowed within the City.
  - Further clarification: Staff checked the City Code and barbed wire is classified as a public nuisance under City Code Section 9-5-4(D) and is not allowed.
  
- Question: The ordinance refers to 8" concrete block roofs and walls. Usually it is an 8" concrete block ceiling. Please clarify how the facility will be required to be constructed.
  - Mr. Sanks' Response: It is not specific as to how the roof would prevent unauthorized entry.
  - City Attorney Clarification: The requirement for walls and roofs to be constructed of materials (eight-inch concrete block or equivalent) sufficient to deter and prevent theft of marijuana being processed is the same as the current requirement for medicinal marijuana found in City Code Section 31.21(b)(2)(L).
  
- Question: Why is there a 1,325' distance required from uses such as churches, daycare centers, etc., while there is only a 500' distance requirement from a residential neighborhood?
  - Mr. Sanks Response: He was not certain of the origin of the 500' distancing requirement from residential neighborhoods. It could be from State Legislation. Another issue might be that the City cannot make it impossible for this use to locate in the City if larger distancing requirements were required.
  - City Attorney Clarification: The distance requirements are the same as those for medicinal marijuana establishments as found in City Code 31.21(b)(3).
  - Mr. Sanks stated that, in his experience working with marijuana regulations, there were concerns that cities would create such significant distancing requirements that could eliminate the use in a City. Therefore, reasonable distance requirements were calculated that would help to minimize the effect on neighboring properties and other uses, while preventing cities from eliminating the use completely within their city.
  
- Is there a map that indicates the Industrial Zoning District where these facilities could be located?
  - Mr. Sanks' Response: He could bring the City's zoning map to use as a reference to indicate where the Industrial district is located.

- Further Clarification: Mr. Sanks displayed the Zoning Map indicating the Industrial District where the use would be allowed.
- Question: Is there was any way to restrict people from using marijuana in their backyard? An example had been cited of someone who lived next door to someone who used marijuana in their rear yard a number of times a day.
  - Mr. Sanks' Response: He does not know if that could be done. The City currently does not have the authority to restrict someone from using medical or recreational marijuana in their backyard on their private property
  - City Attorney Clarification: The City cannot restrict the use in the individual's backyard. This issue would be governed under the State Statute on recreational marijuana, which prohibits smoking in public places and would also be governed by Arizona's "Smoke-free Arizona Act" that prohibits smoking in public places (with certain exceptions) and states: "A private residence is not a 'public place' unless it is used as a child care, adult day care, or health care facility." Thus, Arizona does not have a statewide law prohibiting smoking in private residential units, such as apartments, condos. or backyards. Although the City is limited on what it can and cannot regulate in the privacy of someone's backyard, landlords and HOA's can more fully regulate what can and cannot be done on private property. Additionally, individuals maintain their civil claims for nuisances and there may be the ability for an impacted neighbor to bring a civil claim that the secondhand smoke constitutes a nuisance or disrupts their right to quiet enjoyment, but the City cannot provide legal advice on such actions.

Mr. Sanks noted that the text of the proposed ordinance has been unchanged since it was previously reviewed. Staff recommends that the Commission forward a recommendation of approval to the City Council of the draft ordinance related to Recreational Marijuana.

## 2. Public Comment

There were no public comments.

Chair Pro Tem O'Connor closed the Public Hearing.

## **B. Proposed Zoning Code Text Amendment Related to Regulating Recreational Marijuana**

Commissioner Lawrence thanked Staff and the City Attorney for the work done on this subject.

Commissioner Darre agreed and **moved** to recommend that the City Council approve the proposed ordinance regarding recreational marijuana; Commissioner Lawrence **seconded; unanimous approval.**

## **D. Topics for Referral to City Council**

There were no referrals.

## **E. Minutes**

Commissioner Darre **moved** to approve the minutes of the January 12, 2021 minutes; Commissioner Lawrence **seconded; unanimous approval.**

### III. Staff Reports

Mr. Sanks reported on the progress of the Sun Health project to be located at the northwest corner of Litchfield and Camelback Roads, and on possible new businesses proposing to locate within the Camelback and Dysart Center. In response to a question, Mr. Sanks stated that he did not have information regarding the progress of the City Center. Ms. Maslowski noted that the City Engineer, is scheduled to provide an update on the City Center progress to the City Council at the March 17, 2021 meeting.

### IV. Commission Reports

Chair Pro Tem O'Connor inquired about the Design Review Board report. Ms. Maslowski responded that it had been dropped from the agenda when the Commission started meeting online in order to keep the agendas and meetings short. However, she believes it can be put back on now.

### V. Adjournment

Commissioner Lawrence **moved** to adjourn; Commissioner Darre **seconded; unanimous approval.** The meeting was **adjourned** at 7:36 p.m.

APPROVED:

**PLANNING & ZONING COMMISSION**

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Brian O'Connor, Chair Pro Tem

/pm