



MEETING OF JUNE 6, 2023

TO: Mayor Jordan and City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director

FROM: Britin Bostick, Long Range Planning/Special Projects Manager

DATE:

SUBJECT: **ADM-2023-0011: Administrative Item (Amend UDC Chapter 166 - Development): Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.25 – Commercial, Office and Mixed Use Design and Development Standards. The proposed code change would require cross access to adjacent properties.**

RECOMMENDATION:

City staff and the Planning Commission recommend approval of an amendment to the Unified Development Code amending § 166.25(D)(2) - Driveways to remove the reference to driveways and shared driveways and to change the encouraged cross access to adjacent developed and undeveloped properties to required cross access.

BACKGROUND:

Section 166.25 of the Unified Development Code (UDC) addresses design and development standards for commercial, office, and mixed-use properties. Within that section is 166.25(D) Site Development and Design, and more specifically, language in 166.25(D)(2) that reads: “*Driveways*. Shared drives and cross access between properties shall be encouraged to adjacent developed and undeveloped properties.” While the staff interpretation of this section of the code for several years has been that the language “shall be encouraged” amounts to a requirement for the provision of cross access, and there has not been an appeal of that interpretation, the interpretation was recently scrutinized in the review of a proposed development and a variance application that was submitted for that development.

Per a memo issued by the Assistant City Attorney on March 14, 2023, “A plain reading of §166.25(D)(2) of the *Unified Development Code* provision reveals that cross access is not something that has been required by the City Council. That subsection says, ‘shared drives and cross access between properties shall be **encouraged** to adjacent developed and undeveloped properties.’ It does not say cross access “may be required” or “shall be required.” The memo continued with observations related to the specific development and the variance being requested.

Planning staff reviewed and considered the memo as well as the current code language and the longstanding staff interpretation of the code. Several options were considered for text amendments that would provide clarity and specificity for cross access and shared driveway requirements and consistency in applying the code. Considerations included the connection between shared drives and cross access in site design and

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development, as well as the city's ongoing corridor work and goals related to pedestrian and cyclist safety and reducing conflicts between those users and motorized vehicles. Staff discussed an administrative approval option for variance requests and under what criteria or circumstances a variance to a cross access requirement could be administratively reviewed. Ultimately, staff did not recommend an administrative variance option given the current interpretation of cross access as a requirement; the public benefit sought by cross access requirements for commercial, office, and mixed use properties; and the established process to request a variance by the Planning Commission. The current variance in UDC §156.03(C)(2) provides an opportunity for applicants to demonstrate why the requirement would result in an adverse safety impact, or if the standard should not apply due to a unique situation. Planning staff would continue to evaluate and make recommendations on variance requests for cross access requirements to the Planning Commission.

DISCUSSION:

The purpose of this amendment is to address the regulatory deficiency identified by the Assistant City Attorney and to make clear in the UDC that cross access is required and not merely encouraged. Additionally, there is an opportunity to remove overlapping language in the code.

In reviewing the UDC text related to cross access and shared driveways with the Assistant City Attorney, Planning staff identified that shared driveways are already addressed in Section 166.08 – Street Design And Access Management Standards. Section 166.08(F)(2) reads:

“Separation for two (2) family, three (3) family, multi-family and nonresidential development.

(a) Regional and Regional High Activity Links. Where a street with a lower functional classification exists that can be accessed, curb cuts shall access onto those streets. When necessary, curb cuts along regional links shall be shared between two (2) or more lots. Where a curb cut must access the regional link, it shall be located a minimum of 250 feet from an intersection or driveway.

(b) Neighborhood Links. Curb cuts shall be located a minimum of 100 feet from an intersection or driveway. When necessary, curb cuts along neighborhood links shall be shared between two (2) or more lots.

(c) Residential Links. Curb cuts shall be located a minimum of 50 feet from an intersection or driveway. In no case shall a curb cut be located within the radius return of an adjacent curb cut or intersection.”

Section 166.08(F) continues with (3) and (4), which specify shared curb cut requirements, i.e. shared driveways, for single-family homes and when joint access driveways and cross access easements may be used in reducing separation distance. Planning staff found that shared driveways are sufficiently covered with requirements in this section and propose to remove the language for driveways and shared drives from 166.25(D)(2), instead focusing that section on cross access and replacing “shall be encouraged” with “shall be required”.

A variance option is available for properties that have a hardship in complying with the cross access requirement. Property development that cannot provide cross access to adjacent developed and undeveloped properties may request a variance from the Planning Commission under UDC Section 156.03 - Development, Parking and Loading. The applicable variance and criteria for evaluation is already codified under the General Requirements in 156.03(A):

(A) General Requirements.

(1) Undue Hardship. If the provisions of Development, Chapter 166, or Parking and Loading, Chapter

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172 are shown by the developer to cause undue hardship as they apply to this proposed development (including, but not limited to financial, environmental, or regulatory) and that the situation is unique to the subject property, the City Planning Commission may grant a variance, on a temporary or permanent basis, to the development from such provision, so that substantial justice may be done and the public interest secured; provided that the variation will not have the effect of nullifying the intent and purpose of the development or parking and loading regulations. No variance shall be granted for any property which does not have access to an improved street.

(2) Conditions and Safeguards. In granting variances, the Planning Commission may prescribe appropriate conditions and safeguards to secure substantially the objectives of the standards or requirements so varied.

When the Planning Commission considered the item in their April 24, 2023 meeting there was unanimous support for the item with Commissioner Garlock stating his reasons for supporting the item, including improvements to traffic safety and the variance opportunity in the event of a hardship. Commissioner Winston made the motion to forward the item to the City Council with a recommendation of approval, seconded by Commissioner McGetrick. A vote of 9-0-0 followed. No public comment was received either prior to or during the public hearing.

BUDGET/STAFF IMPACT:

N/A

ATTACHMENTS: Exhibit A - Proposed Ordinance, Proposed Ordinance - Strikethrough, ADM-2023-0011 SRF, Cross Connectivity Memo

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City of Fayetteville, Arkansas

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Legislation Text

File #: 2023-710

ADM-2023-0011: Administrative Item (Amend UDC Chapter 166 - Development): Submitted by CITY OF FAYETTEVILLE STAFF. The request is an amendment to 166.25 – Commercial, Office and Mixed Use Design and Development Standards. The proposed code change would require cross access to adjacent properties.

AN ORDINANCE TO AMEND §166.25 COMMERCIAL, OFFICE AND MIXED USE DESIGN AND DEVELOPMENT STANDARDS OF THE UNIFIED DEVELOPMENT CODE TO CLARIFY THAT CROSS ACCESS BETWEEN PROPERTIES IS REQUIRED

WHEREAS, subsection (D)(2) *Driveways* of § 166.25 **Commercial, Office and Mixed Use Design and Development Standards** currently states that “shared drives and cross access between properties shall be encouraged to adjacent developed and undeveloped properties”; and

WHEREAS, Planning staff and the Planning Commission recommend approval of an amendment clarifying that cross access shall be required rather than encouraged; and

WHEREAS, §156.03, which provides for variances to development, parking, and loading requirements, provides an opportunity for applicants to demonstrate why the requirement would result in an adverse safety impact, or if the standard should not apply due to a unique situation; and

WHEREAS, shared drives are separately addressed with greater detail in § 166.08 **Street Design and Access Management Standards** and can be removed from § 166.25.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals subsection (D)(2) *Driveways* of § 166.25 **Commercial, Office and Mixed Use Design and Development Standards** and enacts a replacement § 166.25(D)(2) as follows:

“(2) *Cross Access*. Cross access shall be required to adjacent developed and undeveloped properties.”



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: **Planning Commission**

CC: **Jessie Masters**, Development Review Manager

FROM: **Blake Pennington**, Assistant City Attorney

DATE: **March 14, 2023**

RE: **Cross-Connectivity**

Often the Planning Commission considers large scale developments with a staff recommendation requiring cross-connectivity to other adjacent properties. Planning staff have long considered this a requirement rather than a goal of the Unified Development Code.

A plain reading of § 166.25(D)(2) of the *Unified Development Code* provision reveals that cross access is not something that has been required by the City Council. That subsection says, “shared drives and cross access between properties shall be **encouraged** to adjacent developed and undeveloped properties.” It does not say cross access “may be required” or “shall be required.”

Even though the developer of the Aronson 112 project has not appealed the staff interpretation of this provision, the Planning Commission can make its decision independently. I encourage you to not be overly strict in your application of this provision.

With respect to the parcel to the east of the Aronson development, the parcel’s landlocked status appears to be a self-imposed condition. This parcel, which has a tree preservation easement on the south end, as well as the car lot to the immediate south of that are owned by the same company. Both parcels were also owned by the same owner at the time the tree preservation easement was created in 2004, which cut off the landlocked parcel’s access to Highway 112 through the car lot parcel.

Arkansas law provides a landlocked property owner with options to gain access to a public street. Depending on prior ownership of the property, the current owner may be able to seek an access easement, whether by necessity or implied reservation. If those are not options, the property owner could seek the establishment of a road through the county court pursuant to Ark. Code Ann. § 27-66-401.