



**AGENDA**  
CITY OF AUGUSTA  
PLANNING COMMISSION  
September 27, 2021  
8:00am

*“Augusta – Where the metro’s edge meets the prairie’s serenity offering the perfect blend of opportunity and proximity for living, commerce and culture.”*

**A. CALL TO ORDER**

**B. MINUTES**

**1. SEPTEMBER 13, 2021 MEETING MINUTES**

Approval of minutes for the September 13, 2021 Planning Commission meeting.

**a. Planning Commission Motion / Vote**

**C. BUSINESS**

**1. AMENDMENTS TO THE AUGUSTA ACTION ZONING REGULATIONS**

Reconsider recommendations for certain zoning amendments previously submitted to the Augusta City Council

**a. Staff Report**

**d. Planning Commission Motion / Vote**

**D. MATTERS FROM / FOR PLANNING COMMISSION**

- 1. Preliminary Plat and Preliminary Master Drainage Plan** for a three-lot subdivision proposed for 3521 North Ohio Street is being moved to October 11, 2021. The revised Preliminary Master Drainage Plan has not yet been resubmitted to the City for review and consideration.

**E. ADJOURN**



## Planning Commission Minutes

September 13, 2021

8:00am

**Members Present:** David Bisagno; David Chappell; Connie Thurman; Jim Keller; Diana Burress; Nick Hoefgen; Jake McClure

**Members Absent:**

**Staff Present:** Cody Sims, Assistant City Manager  
Susan Smith, Admin. Assistant

**Visitors Present:** Brandon Stock and Dawn Stock

*Minutes:* Thurman made a motion to approve the minutes from the August 23, 2021, meeting; Burress seconded the motion. Motion carried without opposition.

*Business:* 1) Z2021-15 Conditional Use Permit for 1018 N Custer Lane  
Sims provided the staff report for a detached residential garage structure located at 1018 N Custer Lane. Pursuant to the Zoning Regulations a detached residential garage structures on lots over 10,000 SF, but not more than three (3) acres are limited in size to 960 square feet. The ability to exceed the maximum floor area requires a CUP approved by the Planning Commission and the City Council.

Bisagno opened the public hearing.

Brandon Stock, owner of the property at 1018 N Custer Lane, spoke about wanting to build the building for several reasons, but the main reason is crime in the area. Keller asked if the driveway will be from Custer Lane or the current driveway. Stock said it would be a gravel driveway off the current driveway to the new building. Hoefgen asked if he would be keeping the other outbuildings on the property, Stock replied yes, he would be keeping all existing buildings on the property.

Bisagno closed the public hearing.

Thurman made a motion to approve Z2021-15 Conditional Use Permit for a detached residential garage structure located at 1018 N Custer Lane. The CUP will enter a 14-day protest period beginning on September 14, 2021, and lasting through Monday, September 27, 2021. Final Review will be done by the City Council on Monday October 4, 2021, at 7:00pm at Augusta City Hall. McClure seconded the motion. Motion carried with no opposition.

*Matters From/For Commission:*

- 1) Zoning Amendments will be at the next Planning Commission Meeting.
- 2) Preliminary Plat for a proposed three-lot subdivision located at 3521 N Ohio St.

*Adjourn:* McClure made a motion to adjourn at 8:37 AM; Burress seconded the motion. Motion carried without opposition.

/s/Susan Smith, Secretary

DRAFT



CITY OF AUGUSTA  
PLANNING COMMISSION  
AGENDA REPORT

Meeting Date: September 27, 2021  
Department: Community Development – Planning & Zoning  
Submitted By: Cody Sims, Assistant City Manager  
Prepared By: Cody Sims, Assistant City Manager  
Agenda Title: **Amendments to the Augusta Action Zoning Regulations**

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**RECOMMENDED ACTION:**

Reconsider recommendations for certain zoning amendments previously submitted to the Augusta City Council.

**BACKGROUND:**

The Planning Commission authorized staff to pursue text amendments to the Zoning Regulations in February 2021. The Planning Commission conducted a series of workshops in March and April to formulate the desired amendments, and on April 26, 2021, the Planning Commission conducted a public hearing to take input on the proposed zoning amendments, pursuant to K.S.A. 12-747. At the conclusion of the public hearing the Planning Commission voted to recommend approval to the City Council.

On Monday, August 2, 2021, the Augusta City Council considered the Planning Commission’s recommendation to approve the zoning amendments. After a lengthy discussion, the City Council voted to return the recommended amendments to the Planning Commission for further consideration on four (4) separate issues:

1. Final approval for Conditional Use Permits.
2. Deletion of Maximum Floor Area Requirements for Certain Accessory Structures.
3. Alternative Energy Uses (Wind Energy Conversion Systems); and
4. Amortization of Shipping Containers and Similar Portable Units / Vehicles as Storage Structures in Residential Districts.

## ANALYSIS:

### *Conditional Use Permit Decisions*

Under the previous zoning regulations, approval for conditional use permits was under the authority of the Planning Commission. However, the Augusta Action zoning regulations (adopted by the City Council on October 24, 2020) changed the Planning Commission's role to advisory, ultimately giving final approval authority to the City Council. The Planning Commission's recommendation sought to reverse the shift in authority, thereby restoring the Planning Commission's authority for review and final approval for all conditional use permits. The intention was to streamline the process and eliminate extended waiting periods resulting from the protest period that must occur between the Planning Commission's public hearing and the City Council's final consideration. After much discussion, it is the Council's preference to retain final approval authority for conditional use permits; however, the City Council was agreeable to forego the fourteen (14) day protest period to eliminate some time spend waiting.

Staff reviewed the elimination of the protest period with the City Attorney to determine if that action was possible. Pursuant to the City Attorney's review, the law on the subject as interpreted by the courts makes it clear that the protest period set forth in K.S.A. 12-757 applies to the issuance of conditional use permits.

[A municipality's] power to change the zoning of a property – *which includes issuing conditional use permits* – may be exercised only in conformity with the statutes that authorize zoning. *Zimmerman v. Board of Wabaunsee County Comm'rs*, 289 Kan. 926, 939 (2009). A county's failure to follow the zoning procedures in state law renders its action invalid. 289 Kan. At 939.

Under K.S.A. 12-755(a)(5), [the] governing body may adopt zoning regulations that provide for issuing conditional use permits. However, K.S.A. 2019 Supp. 12-757 demands certain notice and hearing requirements for amending zoning regulations. **Although the statute does not explicitly mention conditional use permits, Kansas courts have consistently found that the procedures in K.S.A. 2019 Supp. 12-757 apply to conditional use and special use permits, thereby requiring the fourteen (14) day protest period.** As a result, eliminating the fourteen (14) day protest period for the issuance of conditional use permits would be inconsistent with the determination of the courts and likely be subject to judicial review pursuant to K.S.A. 12-760.

### *Staff Recommendation:*

Given the position taken by Kansas courts to uphold the protest period requirements for conditional use permits pursuant to K.S.A. 2019 Supp. 12-757, Staff recommends the Planning

Commission remove amendments pertaining to the conditional use permit decision process and maintain the existing regulations as they are currently adopted.

***Maximum Floor Area Requirements for Certain Accessory Structures***

Maximum floor area requirements exist for two types of accessory structures: detached structures for vehicle storage and structures for general storage. The allowable square footage is based on the specific use as well as the size of the parcel.

<b><i>Lot Size (x = size of parcel; SF = Square Feet)</i></b>	<b><i>Maximum Gross Floor Area (SF = Square Feet)</i></b>
$x < 10,000 \text{ SF}$	Garages: 720 SF Carports: 500 SF
$10,000 \text{ SF} \geq x < 3 \text{ Acres}$	Garages: 960 SF Carports: 600 SF
$3 \text{ Acres} \geq x < 5 \text{ Acres}$	Garages: 1,250 SF Carports: 750 SF
$x \geq 5 \text{ Acres}$	Garages and Carports limited to 6,000 SF

The Floor-Area-Ratio (FAR) requirement exists to prevent overdevelopment of properties. This can be particularly problematic on matters pertaining to stormwater management. The more impervious surface that exists on a lot, the greater the amount of runoff that is diverted to either surrounding properties or through the public stormwater system.

During consideration of the Planning Commission's proposed amendments, the City Council was concerned the development of residential properties could become disproportionate, meaning a greater demand for large accessory structures and smaller houses, thereby negatively impacting the aesthetics of the community. As a result, this proposed amendment was directed back to the Planning Commission for reconsideration.

***Staff Recommendation:***

The proposed amendment was brought to the Planning Commission's attention for two reasons. First, Staff regularly receives requests for detached garages and similar accessory structures that exceed the established limitations for floor-area-ratio. The current process requires a conditional use permit for structures exceeding the maximum limit, resulting in additional time and money on the part of the property owner. From a perspective of

continuous process improvement, the Planning Commission must determine if the current process adds value to the development of Augusta by reviewing citizen requests on a case-by-case basis, or if the current process has introduced non-value-added requirements to the development process and, thereby creating an unnecessary hardship on citizens. Second, each zoning district has limitations on the maximum lot coverage (shown below) that considers all impervious surface on a property (house roof, driveway, sidewalks, accessory structures, etc.), which is intended to prevent overdevelopment of property and the unintended transference of stormwater runoff to surrounding properties.

<b><i>Zoning District</i></b>	<b><i>Maximum Lot Coverage</i></b>
A-1 Agricultural District	30%
R-R Single-Family Rural Residential District	30%
R-1 Single-Family Residential District	35%
R-2 Small Lot/Zero Lot Line (ZLL) Residential District	60%
R-3 Multi-Family Residential District	60%
R-4 Manufactured Home Park District	--
M-1 Mixed-Use Commercial District	60%
C-1 Main Street Commercial District	100% minus applicable yard and off-street parking requirements.
C-2 Central Commercial District	100% minus applicable yard and off-street parking requirements.
C-3 General Commercial District	40%
I-1 Industrial District	50%

The Planning Commission also must consider whether there is the possibility for disproportional development, and what that would look like for the community. The specific concern raised by the City Council was the possibility that residents will favor a smaller house and a larger accessory structure, thereby throwing the lot out of proportion. Staff has a couple of thoughts regarding this issue.

1. Our zoning code does not mandate a minimum square-footage requirement for residential structures as that could easily impact the availability of affordable housing options that already affect our community. Housing size is a personal decision based on demand and financial feasibility. Therefore, what does disproportional development look like? If the regulations are silent on the matter, does that determination then become subjective? Who is responsible for making the determination that something is disproportionate? What is the basis for that determination?
2. Our regulations provide a maximum lot coverage percentage to prevent overdevelopment of personal property. This allows citizens to maximize utility of their property while minimizing the unintended consequences of development.
3. There are relatively few undeveloped residential lots in the community that would likely be most susceptible to this concern, most of which are in Stone Lakes Addition and Willowbrook Addition. Whereas the City zoning regulations do not specify size requirements for single-family residential homes, private HOA covenants (where applicable) generally do establish minimum requirements for their respective community to achieve a desired aesthetic standard. The probability of this concern spreading throughout the community is relatively low as it would take a large financial commitment from property owners to clear existing sites of all improvements and redevelop in this manner.
4. The previous zoning code did not have maximum floor area requirements, which would have supported disproportional development under this scenario. While trends and demands change over time, disproportionate development patterns have not been a common or problematic occurrence throughout the community.

In order to move forward, the Planning Commission must weigh the pros and cons of the existing process and determine if changes are warranted.

- ✓ Is there a valid concern for disproportional development? Will property owners demand smaller residential units and larger accessory units, and will this become the prevailing development pattern in single-family residential zones? What is considered “disproportionate” in the absence of minimum size requirements for single-family residential homes, and who is responsible for making that decision? Are we trying to regulate something that does not or may not exist?
- ✓ Does examination of citizen requests on a case-by-case basis, resulting in a conditional use permit for an accessory structure that exceeds the maximum size requirements, result in the continuous process improvement that yields the best results for the city and the property owner?



- ✓ Do the added layers of regulation already found within the zoning regulations (i.e., maximum lot coverage limitations) work to the benefit of the city by controlling overdevelopment *and* to the benefit of the property owner by allowing maximum utility of private property?

If either of the first two bullet points shown above are the sentiment of the Planning Commission, then the conditional use permit process currently in place is appropriate. However, if the Planning Commission concludes the process can be improved, then a new recommendation or a resubmittal of the previous recommendation is reasonable.

### *Alternative Energy Uses*

Amendments to the zoning regulations were presented to provide greater clarification for alternative energy uses throughout the community in support of the City's distributive generation policy, particularly around wind energy systems. Through research and workgroup sessions, Staff determined that standard language for non-industrial scale alternative energy uses is in conformance with the distributive generation policy and reflects practices common to jurisdictions in the area. Solar energy uses are sufficiently regulated through building codes and standard language for wind energy systems was re-incorporated into the zoning codes. Due to the lack of mention in the building codes, additional regulations provide oversight for wind energy generation structures, including location, height, lighting, and noise requirements. The scale for development for alternative energy uses will generally be regulated by the interconnection standards included in the City's distributive generation policy.

During Council's consideration of the proposed amendments, the Governing Body raised objection over the allowance of wind energy conversion systems within the city limits. The concern centered on the potential for injury or death to persons or damage to property because of turbine blades being thrown from the windmill in the event of mechanical failure.

### *Staff Recommendations:*

From time to time, the Planning and Inspection Office receives requests for alternative energy projects. Solar projects have sufficient regulation in the adopted building code; however, regulations for wind energy conversion systems and wind energy generation structures are largely lacking. This presents a problem to Staff when trying to provide direction to the public. Given the nature of wind energy conversion systems and wind energy generation structures, the zoning regulations are a reasonable place to provide the needed regulations. The Planning Commission must determine whether there is agreement with the Council's concerns about the risk of injury or death to persons or damage to property caused by rotating windmill blades in the event of mechanical failure. If the Planning Commission does not concur with the concern for risk to the community, the Planning Commission can resubmit the original recommendation

back to the City Council. However, if the Planning Commission agrees with the City Council's concern for risk, it would be reasonable to only allow wind energy conversion systems in the Planning Area (i.e., outside of the city limits). A potential provision would read as follows:

*"E. WECS shall be allowed only in A-1, R-R, C-2, C-3, and I-1 zoning districts, and shall be restricted to the Planning Area only."*

If the abovementioned provision is desired to restrict from the city limits, the Planning Commission should also consider whether wind energy conversion systems pose a risk to population densities in the Planning Area as well. In essence, should wind energy conversion systems be restricted from Rural Residential (R-R) zoning districts for the same concern to injury or death to persons or damage to property?

### *Amortization of Shipping Containers and Similar Portable Units/Vehicles as Storage Structures in Residential Districts*

Shipping containers, semi-trailers, rail cars, non-operational trucks, and similar types of units or vehicles are prohibited for use as storage structures on residential properties. This language was added to the zoning regulations to address such usage in various parts of the community. However, while the zoning regulations prohibit future placement of such storage structures on residential lots, existing shipping containers placed before October 24, 2020 are currently considered legal, non-conforming uses because there were no rules that regulated their use prior to the adoption of the Augusta Action zoning regulations.

During the review process for the zoning amendments, the Planning Commission considered language to terminate the current use of shipping containers, and similar types of units and vehicles, as storage structures through an amortization process. An amortization process allows an owner a certain amount of time to recoup their investment in a non-conforming use before the use must be terminated. However, due to a low number of residential properties identified as using shipping containers for storage, the Planning Commission determined that development of a regulation is not proportional to the issue the regulation is intended to address. It was also determined that enactment of such a regulation would place an undue hardship on the property owners. As a result, the language was subsequently dropped from the proposed amendments.

During the City Council review of the proposed zoning amendments, the Council expressed concern about the existing uses of shipping containers. Although they are considered legal, non-conforming issues, the discussion also focused on whether shipping containers are considered real property or personal property, and if that distinction could impact their removal. City Council has requested the Planning Commission reconsider their position on this matter.

Staff has coordinated with the City Attorney to get a legal opinion regarding the feasibility of utilizing the amortization process to eliminate legal, non-conforming uses. Generally speaking, shipping containers are not considered “buildings” or “land.” The exception would be if the container became affixed to the real estate, meaning it would have to be somehow bolted down or otherwise attached to a permanent foundation on the property. This would have had to have been completed prior to the adoption of the zoning regulations on October 24, 2020.

*Staff Recommendation:*

Staff has no recommendation for this reconsideration.

**Next Steps:**

Following the Planning Commission’s reconsideration of the proposed amendments to the zoning regulations, Staff is tentatively planning to present updated recommendations to the City Council for final review at the next regularly scheduled City Council meeting on October 4, 2021. To advance new (or prior) recommendations to the City Council, the Planning Commission has four alternatives to consider for each proposal as outlined in Section 14.04.C.5(a)(b)(c)(d) of the Zoning Regulations.

1. Resubmit the original recommendation back to the City Council with an explanation of the reasoning for such.
2. Submit an amended recommendation based on the original.
3. Submit a new recommendation.
4. Take no action, which shall be considered a resubmittal of the original recommendation.

When the follow-up recommendation is received from the Planning Commission, the City Council, *by a simple majority vote*, may take one of the actions:

1. Override the recommendation.
2. By ordinance, adopt the Planning Commission’s recommendation as submitted, with revisions or amendments, or with conditions.
3. Take no action.

The proposed amendments shall become effective upon publication of the adopting ordinance.