
M E M O R A N D U M

DATE: September 12, 2003
TO: City Council Members
FROM: Russell Weeks, Janice Jardine
RE: Briefing: Petition Requesting Approval to Amend the *Zoning Ordinance* Text of 21A.31.050 to Allow Department Stores in the Gateway Mixed-Use District (Petition No. 400-03-20)
CC: Cindy Gust-Jenson, Rocky Fluhart, David Nimkin, Alison Weyher, Louis Zunguze, Dave Oka, Gary Mumford, Valda Tarbet, Joel Paterson

This memorandum is meant to address the Administration's briefing on Petition No. 400-03-20 that requests approval to amend the Salt Lake City *Zoning Ordinance's* text in 21A.31.050 to allow department stores in the Gateway Mixed-Use District. The memorandum does not contain potential motions because the City Council is scheduled to hold a public hearing on October 9 and formally consider the petition at its October 14 meeting.

It should be noted that the Salt Lake City Redevelopment Agency staff has provided a separate memorandum outlining issues involving the agency. Agency staff will be available September 16 to answer Council Members' questions.

It also should be noted that the memorandum focuses largely on zoning aspects of the petition because the City Council is scheduled to consider potentially wider aspects of the issue at a fact-finding meeting September 18.

KEY POINTS

- The Administration's transmittal contains two potential ordinances. One would allow department stores in the Gateway Mixed-Use District as a permitted use. The other would allow department stores in the Gateway Mixed-Use District as a conditional use.
- The Planning Commission on August 27 found that the proposed text change is not consistent with the applicable current Master Plan and City Council policies and recommended that the City Council not approve the petition to allow department stores in the Gateway Mixed-Use District. The Planning Commission then initiated petitions to:
1.) Refine or revise the current definition of "department store" in the *Zoning Ordinance's* Section 21A.62.040 and clarify the intent and application of the term "large scale uses, such as retail uses that are part of a center or complex" in the *Gateway Development Master Plan*.
2.) Review the extent to which current zoning regulations relating to the location of department stores as presently allowed in the Central Business, Downtown Support, Sugar House Business and Community Shopping districts are consistent with current policy of making Main Street the primary location of department stores.

POTENTIAL OPTIONS

- Adopt the proposed ordinance that would allow department stores in the Gateway Mixed-Use District as a permitted use and follow the Planning Division's recommendations Nos. 2-4 in the Administration's transmittal.
- Adopt the proposed ordinance that would allow department stores in the Gateway Mixed-Use District as a conditional use and follow the Planning Division's recommendations Nos. 2-4 in the Administration's transmittal.
- Do not adopt either proposed ordinance.
- Consider at least one of the proposed ordinance's as part of a larger package of actions that include the Planning Commission's petitions and the Planning Division's recommendations Nos. 2-4.

POTENTIAL QUESTIONS FOR CONSIDERATION

The *Zoning Ordinance* contains an item in the Special Provisions Section that says, "Residential Units, 500 West: Buildings fronting on 500 West shall be required to have residential units occupying a minimum of 50% of the structure's gross square footage." The section also appears to allow modifications to special provisions through a conditional use process. Given that, would the item in the Special Provisions Section have to be addressed before a developer could proceed to build retail contemplated in the Gateway Mall? If so, what effect would that have on developing any retail project in the Gateway Mall?

The agreement between the Redevelopment Agency and Gateway Associates contains penalties to Gateway Associates for "retailers who open a store in The Gateway and who close or curtail retail operations in the Greater Main Street Area or Trolley Square for the period from February 1, 1999 to October 31, 2005." The City Council may wish to ask – if Nordstrom were allowed to move due to adopting one of the proposed amendments – whether the move would fall within the October 31, 2005 date or fall outside it.

The Planning Commission has initiated a petition to "review the extent to which current zoning regulations relating to the location of department stores as presently allowed in the Central Business, Downtown Support, Sugar House Business and Community Shopping districts are consistent with current policy of making Main Street the primary location of department stores." Would enacting an overlay zone be a better method to address the issue? (Please see Page 6 of this memorandum.)

Background/Discussion

As mentioned in the Key Points section of this memorandum, the transmittal contains two ordinances. One ordinance would allow department stores in the Gateway Mixed-Use District as a permitted use. The other would allow department stores in the Gateway Mixed-Use District as a conditional use.

RECOMMENDATIONS IN ADMINISTRATION TRANSMITTAL

According to the transmittal, the Administration indicates that the City Council “may consider amending the text of the zoning ordinance to allow department stores in the G-MU” for the following reasons:

Conditions that led to previous policy statements and commitments have changed significantly. Those conditions include an interest for new retailers to enter the Salt Lake City market; the unavailability of land in the Central Business District to provide large footprints for those retailers; an indication by Nordstrom, a large retail-anchor, that it would like to move from the Central Business District to the Gateway Mixed-Use District; that retailer’s disinclination to conduct business during construction involved in a renovation of the structure currently housing the retailer; and the Gateway Mall’s position as a “bridge which links the underserved western population” of the city to the downtown. (Administration Transmittal, Page 6.)

The Administration suggests that the City Council also should consider three items:

- “The evolution of retail marketing in the last five years.
- “The inability of Nordstrom to find any feasible way to remain along Main Street.
- “The plans of the new (Crossroads Plaza) mall owners to rebuild both malls (Crossroads and ZCMI Center) malls with internal circulation, rather than having anchor stores fronting on Main Street.” (Administration Transmittal, Page 7.)

PLANNING DIVISION RECOMMENDATIONS

The Planning Division, in the same transmittal, makes four recommendations if the City Council determines that it is in the public interest to grant the petition and amend the *Zoning Ordinance*:

1. Amend section 21A.31.050 *Table of Permitted and Conditional Uses for Gateway Districts* to allow department stores in the G-MU District as a conditional use instead of as a permitted use.
2. Review the *Gateway Development Master Plan* to determine appropriate specific amendments to ensure consistency between the master plan and the proposed text amendment.
3. Review the *Salt Lake City Council Policy Statement on the Future Economic Development of Downtown* to ensure consistency between the *Policy Statement* and the proposed text amendment.
4. Review the Salt Lake City Redevelopment Agency agreement with Gateway Associates (The Boyer Company) that imposes a limit on the maximum size of retail spaces at the Gateway Mall to eliminate a potential conflict with the proposed text amendment to allow department stores in the Gateway Mixed-Use District. (Administration Transmittal, Page 7.)

According to the Planning Division, classifying department stores as a conditional use would provide the City with additional control over the placement and design of department stores if they are allowed in the Gateway Mixed-Use District. Because of department stores’ size and potential impacts, the City and the community might also benefit from added public involvement if a conditional use instead of a permitted use were adopted, according to the Planning Division.

PETITIONER'S REQUEST

The transmittal contains the Planning Commission Staff Report. Attachment No. 1 of that report contains the original petition filed July 14 by Gateway Associates. Exhibit A to the petition requests an amendment to Section 21A.31.050 to allow "department store" as a permitted use.

The exhibit quotes the *Zoning Ordinance* as defining "department store" as "a store offering a range of goods displayed within separate sections of the store, which are known as departments. The range of goods sold usually includes apparel, appliances, automotive goods, housewares and home furnishings. Department stores also contain not less than one hundred thousand (100,000) square feet of floor area."

The exhibit contends that:

- "Department stores are also consistent with other uses presently allowed in the GMUD (Gateway Mixed-Use District) as either Permitted or Conditional Uses, including retail goods establishments, retail services establishments, equipment rental, boat/recreational vehicle sales and service (indoor), etc."
- "Department stores would be supportive of the many residential and office uses allowed in the GMUD."
- "The present failure of the GMUD to allow 'department store' as a permitted use is inconsistent with the GMUD's stated objective of creating a mixed-use zone and the development of 'urban neighborhoods containing supportive retail, service commercial, office, industrial uses and high-density residential."
- "Department stores are the very type of retail use that is supportive of the high-density residential uses contemplated for the GMUD, in that department stores offer the residents of the GMUD an opportunity to purchase a wide variety of goods from a single establishment and retail vendor."
- "The proposed amendment is also consistent with the purposes, goals, objectives and policies of the Gateway Development Master Plan, which is also focused on the development of an urban mixed-use neighborhood."
- "Allowing department stores as a permitted use in the GMUD will not adversely affect the properties within or adjoining the GMUD."

REDEVELOPMENT AGENCY ISSUES

The Redevelopment Agency has submitted a separate memorandum containing information regarding the proposed amendment to the *Zoning Ordinance*. Key points include:

- Under the amended agreement between the RDA and Gateway Associates the latter is scheduled to receive a maximum reimbursement from the RDA of \$15,990,414 over a period of 20 years. The amount represents 37.5 percent of projected tax increment generated by the Gateway Mall project.
- The agreement contains penalties to Gateway Associates for "retailers who open a store in The Gateway and who close or curtail retail operations in the Greater Main Street Area or Trolley Square for the period from February 1, 1999 to October 31, 2005."

- The amended agreement restricts the size of retail spaces used by a single retail facility to 45,000 square feet.
- An amendment to the agreement permitted construction of office and a small amount of retail space along 400 West Street to be changed to the first phase of improvements and the construction of the hotel on 500 West Street to fall into a second phase of construction. The memorandum notes that “a portion of the site proposed for construction of the anchor retail and value retail is the hotel site.” It goes on to say, “The agency would have to agree to permit retail construction on the site.”
- The memorandum includes an attached letter from The Boyer Company to Redevelopment Agency Director David Oka to formally request that the RDA Board of Directors amend the agreement to eliminate the 45,000 square foot limit and to amend the Phase II development improvement to allow “other substitute zoned uses such as retail instead of a hotel.”

According to the memorandum, “Gateway Associates has not requested a change in the Relocated Retail User Reduction formula or funds from the Agency to assist in the construction of the proposed Nordstrom/Target.”

CITY COUNCIL STAFF OBSERVATIONS

The *Zoning Ordinance*, Chapter 21A.31 – Gateway Districts – provides the following intent statement: “The gateway districts are intended to provide controlled and compatible settings for residential, commercial and industrial developments, and implement the objectives of the adopted *Gateway Development Master Plan* through district regulations that reinforce the mixed-use character of the area and encourage the development of urban neighborhoods containing supportive retail, service commercial, office, industrial uses and high-density residential.”

The purpose of the Gateway-Mixed Use District G-MU is “to implement the objectives of the adopted *Gateway Development Master Plan* and encourage the mixture of residential, commercial and industrial assembly uses within an urban neighborhood atmosphere. The 200 South corridor is intended to encourage neighborhood commercial and the 500 West corridor is intended to be a primary residential corridor from North Temple to 400 South.” (Sec. 21A.31.020.A - Purpose Statement)

All new construction of principal buildings, uses, or additions that increase the floor area and/or parking requirement by 25% may be approved only as a planned development through the conditional use process with the Planning Commission. (Sec. 21A.31.020.C)

The Special Provisions section of the Gateway-Mixed Use District (Sec. 21A.31.020.D) includes the following:

1. Commercial Uses, 200 South: All buildings fronting 200 South shall have commercial uses that may include retail goods/services establishments, offices, restaurants, art galleries, motion picture theaters or performing arts facilities and shall be provided on the first floor adjacent to the front or corner side-lot line. The facades of such first floors shall be compatible and consistent with the associated retail or office portion of the building and other retail uses in the area.

2. Residential Units, 500 West: Buildings fronting on 500 West shall be required to have residential units occupying a minimum of 50% of the structure's gross square footage.
3. Conditional Use Approval: A modification to the special provisions may be granted through the conditional use process and shall be subject to design review.

Given the above, it appears that the City would have to address item No. 2 in the Special Provisions Section that says, "Residential Units, 500 West: Buildings fronting on 500 West shall be required to have residential units occupying a minimum of 50% of the structure's gross square footage.," through a conditional use process a developer could proceed to build retail contemplated in the Gateway Mall. If that is true, the City Council may wish to ask what effect would that have on developing any retail project.

Similarly, should the proposed change be part of a wider scope of amendment issues that at least includes the two petitions initiated by the Planning Commission?

The agreement between the Redevelopment Agency and Gateway Associates contains penalties to Gateway Associates for "retailers who open a store in The Gateway and who close or curtail retail operations in the Greater Main Street Area or Trolley Square for the period from February 1, 1999 to October 31, 2005." The City Council may wish to ask – if Nordstrom were allowed to move due to adopting one of the proposed amendments – whether the move would fall within the October 31, 2005 date or fall outside it.

During the Planning Commission hearing one of the issues raised was the number of City blocks where the *Zoning Ordinance* allows department stores to be located. One of the petitions initiated by the Planning Commission to "review the extent to which current zoning regulations relating to the location of department stores as presently allowed in the Central Business, Downtown Support, Sugar House Business and Community Shopping districts are consistent with current policy of making Main Street the primary location of department stores." The Planning Division also contends that the location of department stores could be regulated by a clearer definition of the term "department store." A third way to regulate the location of those businesses involves enacting an overlay zone. Council staff has included the following information about overlay zones.

As noted in the Zoning Ordinance, the intent of the Overlay District Chapter is to provide supplemental regulations or standards relating to specific geographic features or land uses in addition to "base" or underlying zoning district regulations within a designated area. Whenever there is a conflict between the regulations of a base zoning district and those of an overlay district, the overlay district regulations shall control. (21A.34.010A)

Examples of types of supplemental regulations or standards include (this could also be used with the conditional use process):

1. Requiring certain land uses to be approved through conditional use or an administrative process.
2. Identifying specific conditions or restrictions on types of uses, construction, location, landscaping, screening, parking, hours and days of operation, storage of materials, distance restrictions or other conditions to prevent or minimize any adverse impacts, specific minimum lot size, yard, landscape and buffer requirements.

Overlay Districts currently established in the Zoning Ordinance include:

1. H Historic Preservation
2. T Transitional
3. AFPP Airport Flight Path Protection
4. LC Lowland Conservancy
5. ARP Aquifer Recharge Protection
6. LO Landfill
7. CHPA Capitol Hill Protective Area
8. SSSC South State Street Corridor
9. Localized Alternative Signage
10. Light Manufacturing Height

Several overlay districts currently listed in the Zoning Ordinance have additional criteria, standards or requirements. For example:

- Landfill Overlay District:
 - Requires all land uses to be approved through the conditional use process.
 - Additional conditions that may be imposed by the Planning Commission include restrictions on types of uses, construction, location, landscaping, screening, parking, hours and days of operation storage of materials or other conditions to prevent or minimize any adverse impacts.
 - Establishes a distance restriction from residential or institutions zones.
 - Identifies specific minimum lot size, yard, landscape and buffer requirements.
- Localized Alternative Sign Overlay District:
 - Requires the applicant to submit proposed regulations for the overlay district to the Zoning Administrator.
 - Proposed regulations may be applied to a particular center, campus or district as an alternative to the sign regulations that would otherwise be applicable.
- Aquifer Recharge Protection Overlay District:
 - Restricts 17 types of land uses that may contribute to groundwater pollution such as agricultural uses, automobile repair and service, golf courses, pesticide use and storage, hazardous materials storage, storm water detention facilities and retention basins, etc.
 - Requires a compliance permit from the City/County Health Department and written approval from the City Public Utilities Department.

