

GreenLife Zoning Code Analysis and Maxwell Street Issues

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Presented by:
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The following bullet points represent a breakdown of issues Mr. Thompson has raised with Staff. For the purposes of this document Unified Development Ordinance (UDO) and Board of Adjustment (BOA) are in abbreviations. Enabling Code language and citations are in parentheses ().

1. Maxwell Street designation

- a. Staff designated Maxwell Street as a commercial use even though it meets the legal requirements of a Residential Street (UDO 7-11-1(h)1). This decision was made administratively by Staff without public notice.
- b. Because other Commercial points of entry exist to the site, commercial trucks are prohibited from using Maxwell to get to the GreenLife property. (UDO 7-11-1-(h)2)
- c. Staff does not have the authority to administratively make this decision when text exist in conflict of that decision. Staff creates “mixed-use designation for Maxwell, though no such definition is in the UDO. This is a matter that should have been made by Council.
- d. Staff has removed residential parking on the residential street and installed no parking areas. These areas have since had signs installed allowing trucks to park on the street in excess of allowable limits. (UDO 19-2-19-59a)

2. The first Loading Bay on Maxwell:

- a. Loading bay was located on a residential street ensuring Commercial traffic on a Residential Street. (UDO 7-11-1(h)1)
- b. The loading area is not sufficiently designed to be buffered. (UDO 7-11-2-d4) According to the drawings submitted, a truck will extend into the 20’ deep buffer area. (UDO 7-11-2-e)
- c. Fencing next to driveway is in visibility triangles. (UDO 7-11-1-g1, g5, UDO 7-10-3-a2b)
- d. Staff does not have the authority to allow loading in the buffer area, only the driveway to get to the loading area. If they are using 70’ trucks, the bay has to contain the truck before it gets into the buffer.

3. Amended Loading Bay or #2 Bay on Maxwell:

- a. See above #2
- b. Loading bay was located on a residential street ensuring Commercial traffic on a Residential Street. (UDO 7-11-1(h)1)
 - i. In order to utilize the loading bay, the trucks MUST enter Maxwell St. and then back into the public street and across the parking lot driveway in order to access the driveway. This is a public safety issue because tractor trailers have to back through a bend in the road, and the back into a busy parking lot.
- c. Trucks typically in excess of 60’ made deliveries to the initial loading area, and the resulting traffic became an issue, the loading bay was relocated at an angle within the buffer area.
 - i. The loading bay being located within the buffer area. (UDO 7-11-2-d4)
 - ii. The loading has effectively eliminated the landscaping for a large segment of the frontage, thus exposing the commercial loading to the residential properties. (UDO 7-11-2-e)
 - iii. The loading bay is not adequately screened.

- iv. There must be a minimum of a 5' buffer strip with trees spaced every 8' in front of the fence that screens loading areas. (UDO 7-11-2-e2)
 - d. The loading area is within the visibility triangle for a public access drive. (UDO 7-11-1-g)
 - i. Vehicles are not allowed to park in visibility triangles.
 - e. Loading is approved on the property line; while UDO states that you cannot park in a setback. (UDO 7-8-13-f9)
 - i. Loading is clearly visible from the street. (UDO 7-11-2e)
 - f. Loading is co-joined with the driveway. Either the drive is greater than 36' or the loading must be separated by 25' from the access drive. (UDO 7-11-1-f1, UDO 7-11-1-f(2)a)
 - g. Loading bay is not large enough to accommodate the size of the trucks used for delivery.
 - i. Loading bay is not designed sufficiently to accommodate maneuvering of the vehicle without externalizing the maneuvering onto a public residential street. A truck is allowed to access a loading bay from a street, but the maneuvering requires the large vehicles to make unsafe turns and often get stuck in the public right of way. (UDO 7-11-1-b6)
 - ii. Trucks are forced to maneuver on a Residential Street in order to back across a public access drive in order to get into the berth. (UDO 7-11-1-d2)
 - iii. Trucks block the sidewalk. (UDO 16-1-16-1a, UDO
4. Dumpsters in the First Loading Bay:
- a. Dumpster area was located on a residential street ensuring Commercial traffic on a Residential Street. (UDO 7-11-1(h)1)
 - b. The one original dumpster on the drawing was approved in the buffer without adequate screening.
 - c. Four dumpsters were installed after construction without adequate screening
 - i. There must be a minimum of a 5' buffer strip with trees spaced every 8' in front of the fence that screens loading areas.
 - d. Larger compactors that do not meet the loading/unloading requirements for the site replaced the dumpsters.
 - i. In order to load/unload, the compactor truck must block the public right of way.
 - e. The location of the dumpsters on Maxwell ensures commercial truck traffic on the Residential Street.
5. Driveway at Maxwell:
- a. Driveway width at Maxwell exceeds the 36' maximum. (UDO 7-11-1-f1)
 - i. The driveway opening is around 80' wide at the sidewalk and 49' curb-to-curb. The only way the drive could exceed the allowable is by variance at the BOA.
 - b. The loading is within the visibility triangles of the driveway.
 - i. See above number #3.
 - c. Staff does not have the authority to grant a variance from 36' allowable to 49' existing.
6. Driveway at Merrimon:
- a. Driveway width at Merrimon exceeds the 36' maximum. (UDO 7-11-1-f1)
 - i. The driveway opening is between 69'-78' wide. The separator is not of the legal minimum (UDO 7-11-1-f(2)a), therefore, it becomes part of the entire opening. The only way the drive could exceed the allowable is by variance at the BOA.
 - ii. Staff does not have the authority to grant a 200% variance from the Code.
 - b. The GreenLife sign is within the visibility triangles of the driveway.
 - i. Since the driveway at Merrimon was expanded, the GreenLife sign is now non-compliant with the visibility triangle with the Exit drive on Merrimon. If the driveway is approved, the sign must get a variance for its location or be moved.
 - c. The separator island in between the driveway is not wide enough.

- i. Whatever the island should be, it must be a minimum of 25' wide, though it may have to be wider depending on the classification of Merrimon. The approved island is only a little over 12' at its widest point. Either it should be expanded to meet the legal requirements or a variance should be sought through the BOA.

7. Use of Public Rights-of-way:

- a. No parking zones on Maxwell are used for loading and unloading of commercial vehicles.
- b. Sidewalks are blocked by loading/unloading vehicles
- c. Public residential parking was removed from a residential street to afford commercial access and loading without a public hearing.
- d. Vehicles in excess of the legally allowable size frequently park in the public street. (UDO 19-2-19-59a)
- e. Commercial vehicles are not allowed on a residential street.

8. Nuisance Issues:

a. Loading in the AM

- i. Though there have been numerous complaints filed by Mr. Thompson, there has been no enforcement of the City Noise Ordinance for trucks that deliver before sunrise.
- ii. Mr. Thompson brought this to the attention of the Noise Board and GreenLife agreed to not deliver before 6 am, but never kept their promise.
- iii. After numerous deliveries before 6 AM; Mr. Thompson returned to the Noise Board to seek enforcement of the 9/04 hearing. City Attorney's office dismissed the hearing.
 1. During the public hearing the City's attorney walked over to the chair and whispered in his ear, at which point he moved for dismissal.
- iv. After numerous deliveries before 6 AM; Mr. Thompson returned to the Noise Board to seek enforcement of the 9/04 hearing, again. City Attorney's office dismissed the hearing with the finding that it was repetitive.
- v. Even though the frequency has declined, deliveries still happen before 6AM.

b. Trucks parking in no parking areas.

- i. Resident parking was removed from the street in order to facilitate truck access to GreenLife from Maxwell Street. Although Council members and Staff had made statements that the no parking areas were the maximum they would take, several months later they approved a plan to take more.
- ii. Even though the justification for the removal of parking was to allow truck maneuvering, GreenLife trucks are allowed to park in the no parking areas on Maxwell Street, but residents are not allowed to park in the no parking areas.
- iii. In addition to not enforcing this part of the UDO, the police chief has issued a letter that he will not enforce this section. His claim is that it happens too often and will be a burden of his staff time.
 1. It is publicly accepted that Mr. Thompson has called numerous times for requests for policing violations such as early delivery or blocked streets & sidewalks. The Police department only has 7 responses on record and has only issued 2 violations to GreenLife vehicles.
- iv. City Staff has posted signs which allow the trucks to park on the public street in a residential neighborhood. The trucks that park there exceed the legal size and weight limits allowed by UDO for a City street.

- c. Trucks parking on the sidewalk.
 - i. According to the UDO, all loading should take place in the loading bay and the loading bay should be designed with sufficient area to accommodate the vehicle. Because of the size to the vehicles GreenLife chooses to use; they don't fit in the loading bay and spill onto the sidewalk. By doing so they block the public right of way.
 - ii. In addition to not enforcing this part of the UDO, the police chief has issued a letter that he will not enforce this section. His claim is that it happens too often and will be a burden of his staff time.
- d. Mechanical Equipment
 - i. Noise from the mechanical equipment on the roof reverberate into the neighborhood and disturb the residents at night. Mr. Thompson brought this before the Noise Board. The Noise Board asked Mr. Swann to explore some sort of screening/buffering of the equipment. This has never happened, so Mr. Thompson brought this back to the Noise Board to get the noise address with more specific language and action. The City Attorney's office dismissed Mr. Thompson from having this heard before the Noise Board.

9. Due Process:

- a. Designation of Maxwell Street:
 - i. The UDO explicitly defines Residential Streets as those “**primarily used** as residential access” therefore Maxwell Street is a residential street. For Staff to go against the legal definition in the code, it would need public process. Additionally, there exist no definitions of “mixed-Use street” as applied and referred by Staff. In essence, Staff made up zoning language to which it could apply policies that are in direct conflict with definitions in the UDO.
- b. Dismissal of Appeal
 - i. The City Attorney's office dismissed several Noise Boards.
 - ii. The City Attorney's office dismissed the Board of Adjustments hearing
 - 1. The Attorney's presentation cited time limits from dates that were not on documentation in the file and on paperwork that did not exist on the files copied by Thompson and Minicozzi.
 - 2. The BOA appeal was with regard to Mr. Shuford's 3/30/05 email to two specific items he said we could appeal. The appeal was filed 4/28/05. The City Attorney presented to the BOA that the appeal was outside of the 30 days allowable.
- c. Application Process
 - i. It is the accepted position of Staff that the submission was a renovation from an A&P grocery store to the GreenLife grocery store (see Shuford's email) when it was actually a renovation from the VHP office use to Grocery. At the time of the adoption of the UDO, this site was an office use.
 - ii. The applicant submitted paperwork claiming that the value of the existing building to be over \$1 million. This was a gross over-estimation, the tax records show the property value at a little over \$400,000. This affects the determination process of Staff (see point #1 in Shuford's memo) for 50% renovation and code allowance.
 - iii. The best estimate for construction cost on the permit application to the was “TBD” (to be determined), when it was finally calculated and accepted by the building department the total cost of the GreenLife project (including soft costs) was \$12.14 per square foot. Several citizens have brought this to the attention of City Staff and City Staff supports that number as a fair estimate of the work done. We believe that this is a gross underestimation. The City's own valuation tables place this form of work between \$46-\$90/sq.ft. At the very least they would owe the City 4x their permit fee.

- iv. Because the renovation exceeded 50% renovation, even assuming \$12/sq.ft. as a realistic renovation cost, the entire site must meet the requirements of the UDO.
- v. We have found no application or permit on file for the enclosing of the loading bay in the original loading area. By enclosing this bay, the building safety official must have new calculations submitted for life safety and fire issues.
- d. Granting of Variances by Staff
 - i. City Staff granted variances to the driveways and landscaping that exceed their authority for approval
- e. Elimination of Code Requirements
 - i. By allowing an exposed loading bay on Maxwell in the area designated by Code for landscaping buffer, the staff has eliminated a numeric requirement of the UDO.
 - ii. By varying the required buffer strips from their required dimension to Zero, at Maxwell as well as at property lines on Merrimon, Staff has granted variances from the landscaping requirements that are a de facto elimination of code requirements. Staff, nor the BOA have the authority to allow such an elimination.