

MEMORANDUM

To: Development Services staff
From: Matthew Seubert for Tina Axelrad, Zoning Administrator
Date: October 1, 2018
Re: **Denver Zoning Code Clarification – What Version of the Code Applies to Modification or Amendment of Applications, Plans, and Permits?**
DZC §12.3.7

Summary

This memo provides a written clarification that addresses the following related questions: Are modified or amended applications or permits submitted under §12.3.3 ‘grandfathered’ per §12.3.7 under the rules applicable at the time of the initial review? What zoning rules apply to modifications or amendments that are submitted under this provision? The reader is advised to use this clarification in conjunction with cited sections of the DZC.

Answers:

1. Amendments or modifications to an active (pending) Site Development Plan (“SDP”) or zoning permit application are not grandfathered. In general, the applicable rules are those in effect at the time the modification or amendment to a pending application is reviewed.
2. SDPs or zoning permits approved under previous versions of Code regulations are valid for the period of validity established by the Denver Zoning Code (DZC), provided that such plans or permits are not modified or amended during that time.
3. If a SDP or zoning permit has been approved, and a modification or amendment is submitted within the approval’s period of validity, the general rule — with limited exceptions — is that the rules in effect at the time the modification or amendment is submitted will apply.

Discussion

Denver Zoning Code §12.3.7.1 stipulates requirements for modifications to pending or approved applications, plans or permits. Similarly, §12.3.7.2 states requirements for amendments to approved applications, plans, and permits. In addition, §12.3.7.1.B articulates requirements for other modifications to approved applications, plans or permits that do not otherwise qualify as “modifications” under §12.3.7.1.A, or as “amendments” under §12.3.7.2.

In general, modifications and amendments to pending SDP and zoning permit applications must comply with current DZC requirements. The applicable rules are those in effect at the time the modification or amendment is submitted, rather than those in effect at the time of the initial application.

One potential exception to the above rule is if the City Council expressly provides in an enacting ordinance for a “grace period” from application of new zoning code requirements, which typically applies

only to projects “in the pipeline” (under review but not yet finally approved). In these rare instances, the enacting ordinance may allow the rules in effect prior to the code change to apply to projects “in the pipeline.” However, staff must read carefully any “grace period” language in an approved text amendment ordinance, as the language may specifically address how amendments and modification to projects “in the pipeline” are to be treated.

Per §12.4.3.6.B.2, “Effect of Approval,” approval of an SDP means a proposed development complies with the standards and provisions of the DZC, and the City may issue zoning and building permits, assuming all other City standards and regulations have been satisfied. However, this effect of approval does not mean that the previous version of the Code applies to review of a proposed modification or amendment to the SDP if the Code itself changes.

There is a similar provision regarding zoning permit review in §12.4.1.5.B, and review of zoning permits with informational notice (ZPINs) in §12.4.2.5.B, in that the Zoning Administrator is using the criteria that the zoning permit complies with all applicable regulations in the Code in making a decision on the application. The requirements are similar for Board of Adjustment (BOA) review of zoning permits with special review (ZPSEs) in §12.4.9.3.D. Compliance with the review criteria does not mean that the previous version of the Code applies to review of a proposed modification or amendment to the permit if the Code itself changes.

In general, modifications and amendments to **approved** Site Development Plans and zoning permits must still comply with Code regulations in effect at the time of submission of the modification or amendment, as described below.

1. If an SDP or zoning permit has already received final approval, the approval is valid for a specified amount of time, unless a building permit has been issued, as follows:
 - a. The period of validity for zoning permits and ZPINs is 180 days per §12.4.1.6.A and §12.4.2.6.A, respectively.
 - b. Site Development Plans have a period of validity of 18 months per §12.4.3.6.C, and approval may be extended an additional 12 months by the Zoning Administrator.
 - c. In general, the period of validity for ZPSEs is 12 months from the date of decision by the BOA per §12.4.9.4.A. The Zoning Administrator may extend the permit for up to 12 months for showing of good cause. Please note that if a ZPSE is granted upon approval of an SDP, then the zoning permit expires at the same time as the SDP.
2. Either during or after the period of validity, if a customer submits a qualified “modification” to an approved SDP or zoning permit, the modification may only be approved if it does not violate the Code in place at the time of modification. Modifications to approved SDPs or zoning permits are submitted as ‘redline’ edits to the previously approved SDP or permit per §12.3.7.1.A.3.
3. Either during or after the period of validity, if a customer submits a change that qualifies as an “amendment” to an approved SDP or zoning permit, the amendment may only be approved if it does not violate the Code in place at the time of amendment. An amendment to an approved SDP or zoning permit is reviewed *as if it were a new application*, according to the rules in effect at the time the amendment is submitted, per §12.3.7.2.A.1.