



October 10, 2018

Mr. Gerald Wingate
City Council President
222 W. Main St., Third Floor
Pensacola, Florida 32502

RE: Proposed CRA Urban Design Overlay

Council President Wingate,

We all want better design and a more walkable City, but the proposed CRA Urban Design Overlay District requirements are so onerous, developments like Southtowne do not even comply because of mandates such as a minimum first floor entry height of 12'- 14' for "environmental health" reasons. Most troubling however, is that many of the requirements are not eligible for a variance request.

The fact that significant portions of the Southtowne development has 9' ceilings on the first floor is not in any way a criticism. The project is located in a special review district and not subject to the new CRA overlay requirements. However, it is important to make it clear that if you wanted to build a design like it elsewhere in the CRA, you would not be able to do so. If a development like Southtowne is not good enough for the CRA areas, what is? The CRA's mandate is to eliminate blight and encourage development, so to implement inflexible requirements which could actually discourage new construction within the CRA are contrary to its mandate.

I support modern, urban design and my past development downtown demonstrates this, but I oppose this overlay because it is inflexible and limits creative design. Every citizen should have the right to present a reasonable alternative and request a variance to any new requirement regardless of whether they are building a home, business or large development.

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I am very concerned with the following issues related to the CRA Urban Design Overlay District process to date:

- 1.) The new requirements were originally presented to the citizens as Urban Design Guidelines, which created the impression held by many citizens that these were recommendations, not requirements.
- 2.) The requirements are presented as the "CRA Urban Design Overlay District" when they are more accurately described as changes to the City's Land Development Code within the CRA areas. The term "Overlay District", typically refers to a Special Review District controlled by the Planning or Architectural Review Board. In these Special Review Districts, reasonable alternatives may be presented to the board for approval. Many individuals are not aware the proposed "CRA Urban Design Overlay District" does not allow a variance request to many of the standards it contains.
- 3.) **City staff is not aware of which requirements within the proposed CRA Urban Design Overlay District are eligible for a variance request and, as a result, has not communicated the full consequences of this proposed overlay to the citizens or to City Council.** No action should be taken by City Council until City staff has provided the citizens with a detailed list of every requirement in the proposed overlay which is not eligible for a variance request. City staff cannot simply state "Yes, variance requests are permitted" when they not aware which requirements are eligible for a variance.
- 4.) **Staff has made major changes to the overlay since it was presented to the Planning Board, with some changes being made as recently as last week, but the revised version was never sent back to the Planning Board to allow citizen input and review.** It has also been stated that CRA staff has the right to change the requirements again, prior to tomorrow's City Council meeting, and present them for approval at the meeting. It is common sense that neither scenario should be allowed, as they completely circumvent due process of law. Due process, in the *Merriam Webster Dictionary*, under Legal Definition states "The guarantee of due process is found in the Fifth Amendment to the Constitution, which states "no person shall...be deprived of life, liberty, or property, without due process of law" **Fundamental to procedural due process is adequate notice prior to the government's deprivation of one's life, liberty, or property, and an opportunity to be heard and defend one's rights to life, liberty, or property."**

5.) City Council intends to consider approval of the CRA Urban Design Overlay District tomorrow, despite the fact it was rejected by the CRA Board due to many of the concerns outlined above. **How can CRA staff and DPZ present an item to City Council on behalf of the City of Pensacola's Community Redevelopment Agency without direction from the CRA Board to do so?** Are the CRA staff and vendors permitted take action without official approval from the CRA Board? If not, then certainly neither CRA staff nor DPZ should be allowed to present the proposed CRA Urban Design Overlay District for approval tomorrow.

There are compelling arguments for and against form-based code. Regardless of your stance, every City property owner should have the ability to review these requirements and fully understand the consequences. I understand CRA staff and DPZ have worked very hard on this overlay, but these requirements cannot move forward without full disclosure and proper due process. Since implementing many of these requirements as changes to the LDC makes them immune from variance requests, this overlay should be passed as guidelines only or resubmitted to Planning Board for recommendation as a special review district.

I appreciate your time and consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Fred Gunther', with a stylized, flowing script.

Fred Gunther

CC: Ms. Sherri Myers, Council Vice President
Mr. Larry Johnson, Council Member
Mr. Brian Spencer, Council Member
Mr. Andy Terhaar, Council Member
Mr. P.C. Wu, Council Member
Ms. Jewel Cannada-Wynn, Council Member
Mr. Ashton Hayward, Mayor
Mr. Keith Wilkins, City Administrator
Ms. Lysia Bowling, City Attorney

Ms. Sherry Morris, Planning Services Administrator
Ms. Brandi Deese, Assistant Planning Services Administrator
Ms. Ericka Burnett, City Clerk
Ms. Helen Gibson, CRA Administrator
Ms. Victoria D' Angelo, Assistant CRA Administrator
Mr. Jim Little, Pensacola News Journal

