

## MORATORIUM ON RESIDENTIAL CONSTRUCTION IN COMMERCIAL ZONES

### History and Recommendation Updated to June 2006

Because of a growing concern about the construction of apartment complexes and other multi-family development in commercially zoned areas, a moratorium on such construction was declared pending further investigation.

Historically under “cumulative” or “cascading” zoning, less intensive uses were generally permitted in zones for more intense uses. In other words, only a single-family house could be built in a single-family [R-1] zone, but a single-family house could be built in multi-family zones [R-2, R-3, R-4] and could be built in commercial and industrial zones as well. It was typical, then, to see an R-2 zone’s “permitted uses” section begin with the language, “all uses permitted in R-1” or to see all commercial and industrial zones’ “permitted uses” sections begin with “all residential uses.” The Valparaiso Ordinance permits some of this “cumulation” or “cascading” but not all. Nor has concern been registered about any cascading other than multi-family residential uses being built in commercial zones.

After a thorough review of the ordinance and a discussion with many interested persons about the problem, we now believe that the matter can be remedied with one very simple amendment. Residential uses of any kind (single-family or multi-family) are not permitted in C-1, C-2, or C-4 zones except on upper floors as is common downtown, for example. Only in C-3 does the ordinance permit residential uses without exception.

Currently, Section 2210 [Permitted Uses in C-3] reads, in part: “1. All uses permitted in R-1A, R-1, R-2, R-3, R-4, C-1, and C-2 districts.” **The recommendation is to amend this language to read as follows: “1. All uses permitted in R-1A, R-1, R-2, R-3, R-4, C-1, and C-2 districts, provided that residential uses shall conform with the lot area requirements of the R-4 district and provided further that no residential use shall occupy the first or ground floor of any structure located in the C-3 general commercial district.”**

The language is drawn directly from parallel provisions in the C-1, C-2, and C-4 districts. This language prevents using C-3 zoned land for an apartment complex without ruling out some second-floor uses for apartments, just as provided for in the other commercial districts.

We further recommend that, upon passage of this amendment, the moratorium be lifted.

**See Reverse for Update**

## Update

The City Council has sent the matter back with the following concerns: some existing buildings in the C-3 area were originally built as large (and in many cases architecturally significant) single-family dwellings and continue to be used as such, in many cases with large expenditures for restorations, improvements, etc. As the impetus for the moratorium in the first place was to prevent apartment complexes being built in C-3 areas where commercial uses would be more beneficial to the City, full protection of these existing single-family structures in C-3 would be perfectly consistent with the initial intent. Nor does the general protection of “legal nonconforming uses” (which such structures would become) go far enough as variances are required for many extensions, enlargements, etc. all of which I think it is in the interest of the City to protect and unburden.

Therefore, I recommend that we amend Section 2210 [Permitted Uses in C-3] so that it reads as follows:

**1. All uses permitted in R-1A, R-1, R-2, R-3, R-4, C-1, and C-2 districts, provided that residential uses shall conform with the lot area requirements of the R-4 district and provided further that no residential use shall occupy the first or ground floor of any structure located in the C-3 general commercial district, except that structures existing at the time of the enactment of this section which were built as single-family residences and continue to be maintained as such will in all respects be lawful uses and can be expanded, restored, or rebuilt without variance or special exception subject only to the requirements of all other laws, statutes, or ordinances.**

Bruce Berner, for the Plan Commission Special Committee