

**COMMENTS AND ANALYSIS RELATED TO OPEN SPACE
SCHLOTZSKY PUD REZONING CASE C814-2018-0121 (218 S LAMAR)
by Zilker Neighborhood Association (31 Oct 2020)**

The City staff has indicated in their latest Summary Sheet for the second and third reading that they believe that the proposed PUD has 38% open space. The Zilker Neighborhood Association (ZNA) disagrees that the staff's calculation meets the definition in the Land Development Code (LDC). ZNA has found only a few places in the Land Development Code (LDC) where open space is defined.

1) One is in Subchapter D of Chapter 25-2 related to Neighborhood Plan Combining Districts. Here it defines "Community Open Space" and "Private Open Space" where Community Open Space means open space that is available for use by the public and Private Open Space means open space associated with a dwelling that is intended to be used exclusively by the dwelling's residents. The Schlotzsky PUD is obviously not in a Neighborhood Plan Combining District.

2) Another is in Chapter 25-3 related to Traditional Neighborhood Districts. Here it talks about "Public Open Space" and "Private Open Space" where Public Open Space is owned and maintained by the City and Private Open Space is owned and maintained by an individual property owner. Again, the Schlotzsky PUD is not in a Traditional Neighborhood District.

3) The only other place we have found open space defined is in Subchapter E of Chapter 25-2 related to Design Standards and Mixed Use. This Subchapter generally addresses the physical relationship between commercial and other nonresidential development and adjacent properties, public streets, neighborhoods, and the natural environment. It seems to be the most relevant code to the Schlotzsky PUD. §2.7 provides regulations for "Private Common Open Space and Pedestrian Amenities." It does not distinguish between private open space and public or community open space. Presumably, private open space simply means open space that is owned and maintained by an individual property owner. ZNA believes this is the definition that applies to this case.

We will get back to the open space requirements in Chapter 25-2 Subchapter E in a moment, but first we want to address the PUD requirements in Chapter 25-2 Subchapter B.

Minimum (Tier One) open space requirements for a PUD are specified in § 2.3.1.C as follows:

All PUDs must:

C. provide a total amount of open space that equals or exceeds 10 percent of the residential tracts, 15 percent of the industrial tracts, and 20 percent of the nonresidential tracts within the PUD, except that:

- 1. a detention or filtration area is excluded from the calculation unless it is designed and maintained as an amenity; and*
- 2. the required percentage of open space may be reduced for urban property with characteristics that make open space infeasible if other community benefits are provided;*

Superior (Tier Two) open space requirements for a PUD are specified in § 2.4 as follows:

Open Space

Provides open space at least 10% above the requirements of Section 2.3.1.A. [sic, this appears to be a typo in the code and should be 2.3.1.C] (Minimum Requirements). Alternatively, within the urban roadway boundary established in Figure 2 of Subchapter E of Chapter 25-2 (Design Standards and Mixed Use), provide for proportional enhancements to existing or planned trails,

parks, or other recreational common open space in consultation with the Director of the Parks and Recreation Department.

The only other place open space is mentioned in the PUD requirements is when it refers to art provided in open spaces as a superiority item (incidentally, the Schlotzsky PUD uses art as a superiority item for justification of the PUD, but this art is not being provided in the open space; it is being provided inside the building and will be open only during certain times of the day and week). Nowhere in the PUD requirements is “open space” defined, so we are left with the definitions defined elsewhere in the LDC.

Now, getting back to the open space requirements in Chapter 25-2 Subchapter E, §2.7.1 states that the open space standard applies to all site plans two acres in size or larger, and all multifamily and condominium uses except as provided in 25-2-776 and 25-2-780. Exceptions in 25-2-776 and 25-2-780 refer to condominium use and multi-family residential use. What is immediately obvious is the problem created when the minimum size required for a PUD in LDC §25-2-144 is ignored. This PUD is not greater than two acres. Nevertheless, we believe that the open space requirements in this section are still applicable; otherwise, the PUD open space requirements have no meaning.

Chapter 25-2 Subchapter E, §2.7.3.A provides for these standards:

A. Amenity Required. All development subject to this section shall devote a minimum of five percent of the gross site area to one or more of the following types of private common open space or pedestrian amenities:

- 1. A natural and undeveloped private common open space, for use of the residents, employees, and visitors to the development.*
- 2. A landscape area other than one required by Subchapter C, Article 9 (Landscaping), provided such landscaped area has a minimum depth and width of 20 feet and a minimum total area of 650 square feet. The area shall include pedestrian amenities.*
- 3. A patio or plaza with outdoor seating areas, provided the patio or plaza has a minimum depth and width of 20 feet and a minimum total area of 650 square feet. The area shall include pedestrian amenities including fully or partially shaded spaces with flexible or permanent seating to support these places as gathering areas.*
- 4. A play area with amenities or equipment suitable for children under nine years of age, provided the play area has a minimum depth and width of 20 feet and a minimum total area of 650 square feet. Play areas shall comply with the most current Consumer Product Safety Commission guidelines for playgrounds as well as ASTM International standards as applicable and shall have impediments between the activity area and any nearby vehicular drives or parking areas to minimize the opportunities for young children to wander into traffic. Such impediments may include berms, fencing, landscaping or other barriers as appropriate to the site and which meet safety standards. Play areas shall include partially-shaded areas with flexible or permanent seating for adult supervision. A project which chooses this option may reduce the total amount of open space required by 10 percent.*
- 5. Spaces that provide educational, historic, or cultural features, or sensory experiences,*

such as culinary, therapeutic or sculptural gardens; soundscapes, and interactive water features.

6. Swimming pools, wading pools, or splash pads.

7. Water quality and storm water detention ponds designed as an amenity and approved by the Director.

8. A multi-use trail connecting to or proposed in the City of Austin Trails Master Plan, Austin Parks and Recreation Long-Range Plan, Sidewalk Master Plan, or Bicycle Plan, or other trail connections as approved by the Director.

9. Basketball, tennis, volleyball, or other sport courts or playing fields. 10. A transit plaza, on private property, that is adjacent to a Capital Metro MetroRapid stop or station. 11. A combination of the above-listed amenities. (See Figure 36.)

The first thing to note is that the PUD requirements increase the 5% minimum to 20% for Tier One and 30% for Tier Two. Second, the landscaped area must be a minimum of 20 feet in width and 20 feet in depth and cannot include the landscaped area required by Subchapter C, Article 9 (i.e. the landscape yard, aka the street yard).

Chapter 25-2 Subchapter E, §2.7.3.C provides for these further limitations on crediting of open space:

C. Areas Not Credited. Lands within the following areas shall not be counted towards private common open space or pedestrian amenities required by this section:

1. Open space in a required street yard;

2. Public or private streets or rights of way;

3. Off-street parking, loading areas, driveways, and service areas; and

4. Water quality and storm water detention ponds, unless designed as an accessible amenity and approved by the Director.

Based on standard #2 in §2.7.3.A and limitations #1 and #3 in §2.7.3.C above, the PUD cannot take open space credit for land that is in the street yard, for strips of land that are less than 20 feet wide, or for land in loading areas, driveways or service areas, which is exactly what the PUD has done in its July 15 Addendum 1 Exhibit of the open space. While the City staff did exclude the loading area in its latest review, it did not exclude those areas less than 20 feet wide and it included street yard space that is not allowed to be credited. Based on the Subchapter E standards and limitations, ZNA believes the actual provided open space is only 15.9% and requests that City Council reject the PUD rezoning based on its failure to meet even the Tier One 20% open space requirement.

