

**§ 14-16-3-16 PRIVATE COMMONS DEVELOPMENT.**

- (A) A Private Commons Development (PCD) may be established on a tract of land containing two or more acres and zoned RA-1, RA-2 or RO-1, or any zone designated for this type of development in a sector or area plan in accordance with the Zoning Code.
- (B) The number of dwelling units permitted in a PCD is determined by dividing the site area by the minimum lot size permitted in the zone rounded to the nearest whole number. However, the number of dwellings in a PCD may not be more than 50. The minimum lot size to be used for determining the number of dwelling units in a PCD with RA-1 zoning shall be 21,780 square feet.
- (C) The dwelling units may be houses or townhouses or any combination thereof on any size lots.
- (D) The minimum setbacks are as follows:
- (1) Front – 15 feet except driveways shall not be less than 20 feet long.
  - (2) Rear – 15 feet for houses and townhouses unless adjoining R-1, RA-1, RA-2, or RO-1 zoned land, in which case the setback for townhouses shall be 25 feet.
  - (3) Side – there shall be no required side yard setback except that there shall be a minimum setback of five feet for all side yards contiguous with the PCD boundary.
- (E) A minimum of 30% of the gross area of a PCD or 100% of the area gained through lot size reductions, whichever is greater, shall be set aside as a Private Commons Area (PCA).
- (F) The PCA may be used for agriculture, landscaping, recreation, open space or any combination thereof. It may be composed of separate tracts but each shall have a minimum length and width of 35 feet and shall be visible from a public right-of-way. Land used for streets, driveways, parking, sidewalks and private yards may not be counted as part of a PCA. No buildings or structures are permitted in a PCA except those necessary for the operation and maintenance of the PCA. A PCA may have underground easements. The PCA shall be set aside by the developer either as a Private or Public PCA. A Private PCA shall be created, subject to a finding of suitability by the DRB, through a land use easement and restrictive covenants acceptable to the Development Review Board (DRB). A Public PCA may be created by dedication of land to the City.
- (1) For the creation of a Private PCA:
- (a) The covenants shall be in the form of recorded deed restrictions and shall be referenced on the subdivision plat.
  - (b) The covenants shall assure that the PCA will be protected from all forms of development except as shown on an approved site development plan.
  - (c) The covenants shall require individual lot owners and the members of the homeowner's association, if applicable, to be jointly and severally liable for maintenance of the PCA.
  - (d) A land use easement, in favor of the city, shall state the proposed allowable use(s) of the Private PCA, and require that the Private PCA be maintained by parties who have ownership interest in the PCD. The land use easement shall state that if the responsible parties fail or refuse to act on maintenance obligations as set forth in the easement, the City shall have the authority to perform such maintenance as necessary to protect public health and safety. The easement shall state that the city may, after written notice and failure to comply within 30 days, enter upon and maintain the Private PCA. The

easement shall state that the cost of such maintenance plus any other penalties or costs allowed by law in connection therein, shall be assessed against the properties within the PCD and failure to pay assessed charges may result in a municipal lien against each of the individual lots in the PCD. This provision shall not be deemed to create an obligation to act on the part of the city. Under no circumstances will the city maintain recreational uses. Under no circumstances shall the city maintain the PCA for a period longer than one year.

- (e) The use of a PCA may be restricted to the residents of the PCD and may be fenced so long as the public's view is not significantly diminished.

(2) For the creation of a Public PCA:

- (a) An application for consideration of the Public PCA shall be submitted to the DRB in writing at the time the need or desire for a Public PCA becomes apparent, preferably at the sketch plat submittal stage. The application shall state fully the grounds justifying the Public PCA and all of the facts relied upon by the applicant. The application shall be processed concurrently with the related plat.
  - (b) In determining whether or not the property offered as a Public PCA is acceptable for that purpose, the DRB shall examine the quality of the property offered as to its proposed design, layout, improvements, location, size, cost of maintenance, and general suitability for City purposes.
  - (c) If after examining the above criteria the DRB determines that the creation of a Public PCA would create a net benefit to the public because the property offered is clearly more beneficial to the public welfare as a Public PCA as compared to the minor detriment resulting in additional burdens to the City, then the DRB shall approve the creation of a Public PCA.
  - (d) If approved by the DRB, the property offered as a Public PCA shall be dedicated to the City, in accordance with the Subdivision Ordinance.
  - (e) Responsibility for maintenance of the Public PCA shall be determined during review by the DRB. Written acknowledgement to the DRB from the relevant City department desiring to accept a Public PCA shall be provided and a notation as to maintenance responsibility required on the approved plat.
  - (f) If dedication of a Public PCA is not accepted by a City department, then the PCA shall remain private.
  - (g) The use of a Public PCA shall be open to the public.
- (G) A PCD is created by DRB approval of a site development plan and a subdivision plat. Site plan and subdivision approval are contingent upon recorded deed restrictions and easements approved by the DRB.
- (H) The recorded deed restrictions may not be amended or repealed without the City's prior written approval.
- (I) Upon recording the plat and all required documents for a PCD, the area of the PCD shall be delineated and designated with the letters "PCD" on the official zone map.

- (J) In accordance with this article, the Planning Director may void the site development plan and remove the PCD designation if the property is replatted to conform to the requirements of the underlying zoning district.

(Ord. 10-1995; **2013**)

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