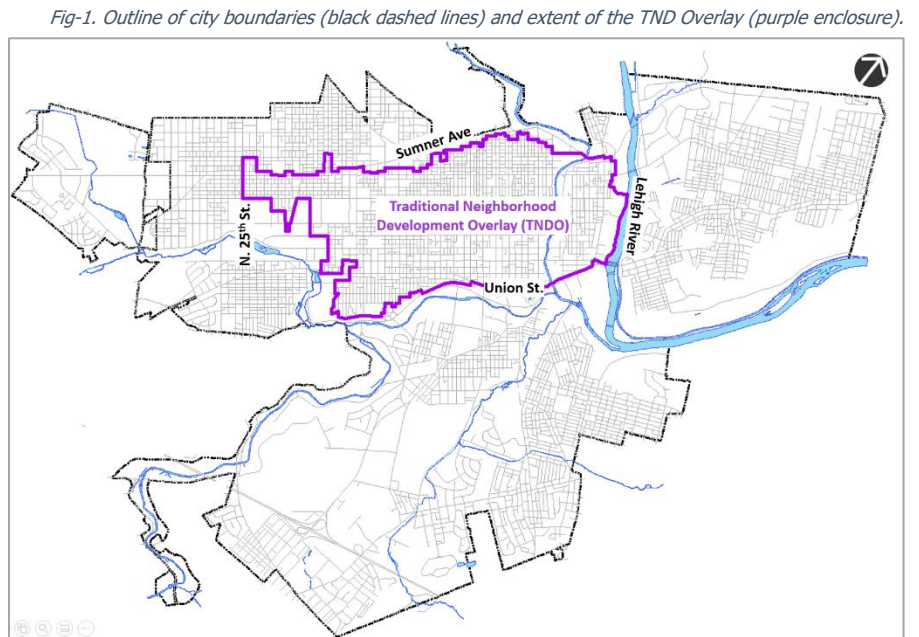


**STAFF REPORT**

TO : Allentown City Planning Commission  
 FROM : Planning & Zoning Bureau  
 SUBJECT : Proposed Text Amendment to the Zoning Code, re: Repeal of Section 1314.02.C.4(7) (Z Case #21-1)  
 DATE : May 11, 2021

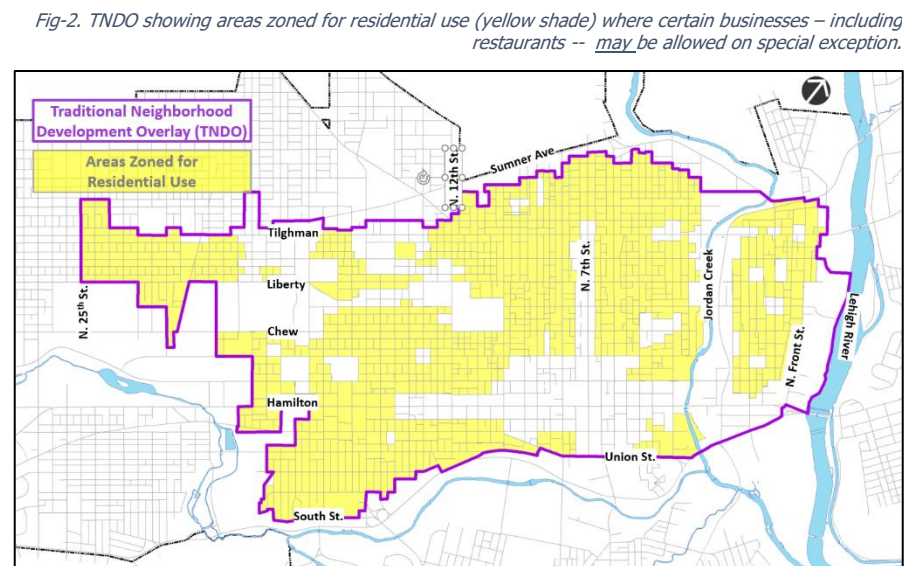
**Background**

- 1) This proposed zoning text amendment originates from City Council. It proposes to repeal the provision which prohibits the frying of foods on-site in restaurants located in residential zoning districts in the TND Overlay (Traditional Neighborhood Development Overlay).
- 2) The proposal comes with a draft bill which features a repeal clause, a severability clause, and an effective date.
- 3) No rationale was offered for the proposed action, however.



**Findings / Analysis**

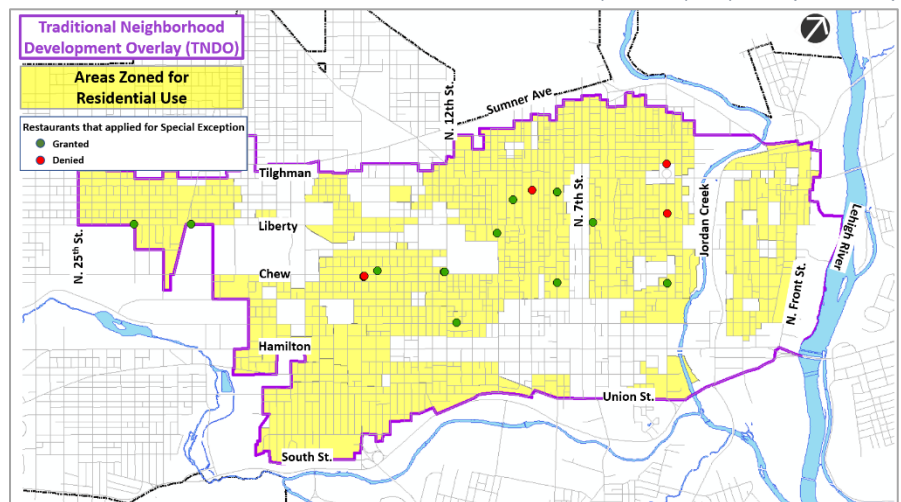
- 4) (For more information on the concept of Traditional Neighborhood Development and how this is used in Allentown, please refer to Attachment 1.)
- 5) Figure 1 illustrates the extent of the TND Overlay area in Allentown. Roughly, from the Lehigh River in the east to North 25<sup>th</sup> Street in west and, roughly, just south of Sumner Avenue in the north and Union Street in the south.



- 6) The TND Overlay covers various zoning districts – like residential, commercial, industrial, parks, and institutional – but the areas affected by the proposed change are the areas shaded in yellow (as depicted in Fig-2). These are areas zoned for residential uses, but certain businesses may be allowed therein on Special Exception granted by the Zoning Hearing Board, after the business operator agrees to abide by a number of performance standards and limitations -- for example:
  - a) Limited hours of operation
  - b) Limited alcohol sales
  - c) No frying of foods on site
  - d) No Adult Use activity (as defined in the ZC), to mention a few.
- 7) Based on anecdotal assertions by previous administrators of the Zoning Code and those who helped frame the ordinance, the rationale behind the limitations were discussed and agreed on by a working group of residents:
  - a) To maintain the traditional character of older residential neighborhoods in center city.
  - b) To have a predictable time when peace and quiet may be enjoyed in the host neighborhood.
  - c) To preserve a wholesome, family-oriented residential area in the host neighborhood.
  - d) To mitigate negative impacts that commercial frying will have on adjoining residences (i.e., odor, smoke, noise from ventilating-exhaust systems).

8) Since the City's adoption of the TND Overlay in 2010, the Zoning Hearing Board has reviewed 18 applications from 15 restaurants to obtain special exception to operate in those yellow-shaded areas (Fig-3). Of the 15 restaurants, two were denied a special exception because they intended to fry food. The others were denied a special permit for other reasons (like proposed hours of operation were deemed detrimental to the neighborhood, parking was inadequate, the hardship was not met, etcetera).

Fig-3. TND Overlay showing areas zoned for residential use (yellow shade) and food service establishments that tried to obtain special exception permits (colored dots)



- 9) Considering that only two restaurants – in the ten years that no 'no-frying' provision has been in force in the TND Overlay – have sought permission to commercially fry foods on-site -- it strongly suggests that the provision is working as intended.
- 10) If the proposed action were passed, that is – allow commercial frying of food on-site – all those 15 restaurants, can now potentially commercially fry foods on-site. We can expect more to follow suit if the proposed measure were passed.
- 11) Aside from odor, smoke and noise, deep frying of foods at a commercial scale can be a source of destructive fire incidents at any location. The staff feels that allowing commercial deep frying in the TND Overlay – where there is none now -- heightens the risk of fire incidence where potential destruction could be widespread given the closeness of housing structures in the area (that is, row housing-type is the most prevalent).

12) With the adoption of the TNDO, the City of Allentown recognized the need to preserve contiguous blocks of old residential areas in Center City where structures were found to possess historic characteristics and interesting architectural details worth preserving and conserving. It is no surprise that the TNDO covers the three historic districts of Allentown. In fact, the extent of the TND Overlay closely resembles the areas in Center City that contain neighborhoods deemed eligible for listing in the national historic registry.

### **Summary**

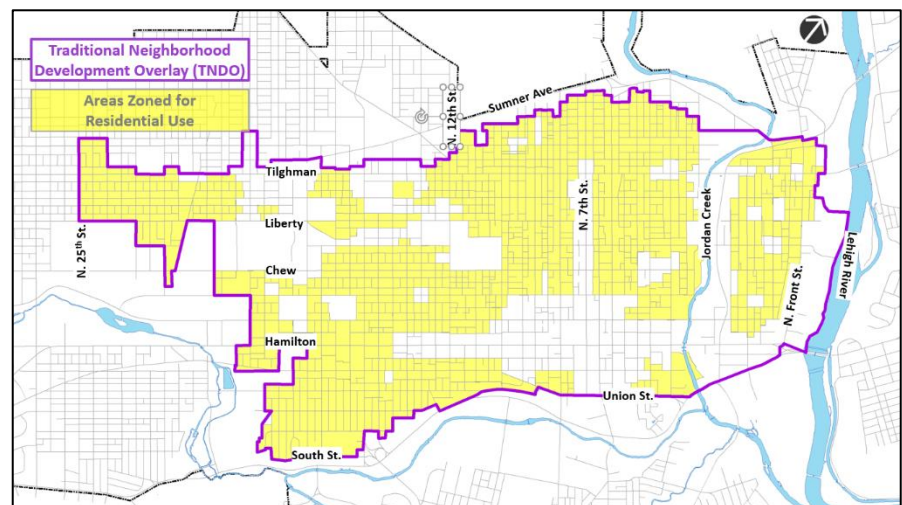
13) Based on the foregoing, including the arguments highlighted in Attachment 1, Staff deems the proposed text amendment not supportive of and inconsistent with the comprehensive plan, particularly that which relate to engendering welcoming neighborhoods and preserving older neighborhoods.

## Traditional Neighborhood Development (TND) and the TND Overlay in Allentown

The term Traditional Neighborhood Development refers to a design concept in city planning that envisions a compact, walkable residential area that has a variety of housing types, a mix of complementary land uses and robust public spaces in form of either parks, a market or a plaza mall – accessible by a number of mobility and transit options. Implementing such a concept comes in various versions and complexity depending on the desires of the host community. Whatever the version, however, the underlying aims are the same: preserve and sustain older structures, enhance pedestrianism, and encourage economic diversity.

In Allentown, the City implements a version of this urban concept through a zoning overlay that encompasses the older areas of the city. Allentown’s TND Overlay (or TND) covers various zoning districts – like residential, commercial industrial, parks, and institutional – but the areas affected by the proposed text amendment are the areas shaded in yellow (as depicted in Fig-2). As such, this literature will just feature relevant narratives from the comprehensive plan and the zoning code on the matter.

Fig-2. Extent of the TND Overlay (purple enclosure) areas zoned for residential use (yellow shade) where restaurants may be allowed on special exception.



The regulations of “the TND are intended to serve the following major purposes:

- a) To protect the character of Allentown’s traditional neighborhoods and promote development that is consistent with the physical form and characteristics of those neighborhoods.
- b) To encourage the continued use, appropriate rehabilitation and adaptive reuse of historic buildings.
- c) To promote non-residential development that is designed to promote walkability and is of a scale and design that is compatible with adjoining residential neighborhoods.
- d) To carry out the recommendations of the City’s Comprehensive Plan, including recommendations to preserve neighborhoods and community character.”

In turn, the comprehensive plan espoused that:

“Opportunities for neighborhood retail and service uses at scales compatible within residential areas, subject to various performance standards for parking, signage, and lighting, should be provided in neighborhoods where this mix has traditionally been found. Traditional Neighborhood Development concepts should be applied to these neighborhoods in the City’s Zoning Ordinance

“Further, uses permitted within commercial areas should be reevaluated to determine their suitability within those areas.”

“The use of flexible, performance-based zoning techniques designed to deal with the existing diversity of dwelling types, densities and uses that presently exist in many of the City's neighborhoods, while providing sufficient safeguards for residents from incompatible uses and structures, should be pursued.

“Certain performance standards should provide for the protection of residential uses from the potential impacts associated with commercial uses such as traffic, signage, illumination, and hours of operation.”

Commercial uses in residential districts in the TNDO, the Zoning Code prescribes that:

“a. As a special exception use, an office, personal service establishment, retail store, nail salon, restaurant (with no drive-thru), retail bakery, or art gallery use may be approved by the Zoning Hearing Board (“the Board”) provided all of the following requirements are met:

- (1) The lot shall be at the corner of 2 streets.
- (2) At least a portion of the proposed business space shall have been occupied by a principal lawful business use within the previous 3 years. This 3-year time period may be extended to a total of 5 years if the Zoning Hearing Board determines that the property retains traditional features of a storefront business, such as display windows, signs, etc. This subsection may allow a new business use to be established even when a nonconforming use has been considered to have been abandoned within the limits prescribed herein. The new business use shall not necessarily be limited to the floor area that previously was occupied by a business use, however the new business use shall be limited to the existing building, except for outdoor café seating where permitted, and may not involve building expansions for the use, other than as may be necessary for fire safety or handicapped access.
- (3) In considering whether to approve the special exception use, the Board shall consider whether the total impact upon the neighborhood and parking needed for all uses on the lot after the new use would be in operation would exceed the total impact of all uses on the lot that existed prior to the application. For example, this decision may consider whether the applicant proposes to reduce the number of dwelling units on the lot.
- (4) The Board shall have the authority to place reasonable conditions upon the use, including but not limited to:
  - a) limits on hours of operation,
  - b) limits on alcohol sales, and/or
  - c) limits on the maximum floor area occupied by the use.
- (5) The Board shall have the authority to modify off-street parking requirements, considering the total impact of the new uses of the lot versus the previous uses, and considering the number of customers arriving by public transit and/or walking. The Board may also approve a reduction in the required parking as part of the special exception approval if the applicant proves that there is an excess of on-street parking spaces during hours when the business will be in operation.
- (6) Signs shall need approval as part of the special exception process. The Board may approve a total sign area of up to 20 square feet, which shall be limited to projecting, wall and/or window signs. No new sign shall be internally illuminated. Any lighting of signs shall be limited to hours when the use is open to the public.
- (7) The use shall not include on-site frying of foods.
- (8) For a barber shop, beauty shop or hairstyling/haircutting use, see Note (GG) at the end of Section 1313.01.B.
- (9) The use shall not be an “Adult Use” as defined in this ordinance.
- (10) The operator of the use shall regularly collect litter on the sidewalk and gutters adjacent to the lot.”