

STAFF REPORT

DATE: April 29, 2026

TO: Board of Adjustment

FROM: Zoning Administration
Planning & Development
Services Department

ACTIVITY NO. TZ-ZCA-0226-00001

**C10-26-02 ENCLAVES AT TUMAMOC LOTS 1-129 / KB HOME TUCSON INC
TR / 1802 WEST SAINT MARY'S ROAD, R-1, O-3**

The appellant, Shana West, is appealing the Zoning Administrator's Determination (ZAD), TZ-CMP-1125-00197, issued January 22, 2026 regarding how the General Plan and applicable or neighborhood plans are treated when applied to Flexible Lot Developments (FLDs). The Zoning Administrator (ZA) determined General Plan and Area Plan policies should not be treated as binding zoning rules for FLDs, and under Arizona law, the General Plan and Area or Neighborhood Plans are not zoning laws, and finally, the Tucson Unified Development Code (UDC) is the City's enforceable land use law which provides FLDs flexibility as it applies to UDC dimensional and design standards. The appellant contends that the policies, guidelines, and "shall" statements within the General Plan and area plans are mandatory and enforceable as part of the zoning code.

THE APPELLANT'S REQUEST TO THE BOARD

The appellant is requesting reversal of the ZAD, issued January 22, 2026.

ZA DETERMINATION DATED JANUARY 22, 2026

Refer to Exhibit 1 for the ZA Determination in this case.

APPELLANT'S ARGUMENTS TO REVERSE THE DETERMINATION

On February 20, 2026, the appellant filed an appeal to the January 22, 2026, ZAD. See appellant's appeal application for Case C10-26-02.

The appellant identifies the following as the issues on Appeal:

1. Compliance with the General Plan and applicable area or neighborhood plans is mandatory and enforceable as part of the zoning code and is not optional or advisory.
2. FLDs are intended to advance community goals, rather than simply provide flexibility.
3. Conflicts between the General Plan or Area Plan and other UDC provisions are effectively internal UDC conflicts, requiring stricter standards to prevail. In this case, that would mean the application should undergo further review and potentially additional requirements to ensure full conformity with adopted plans and the core purpose of the FLD ordinance.

APPLICABLE TUCSON ZONING CODE SECTIONS

Tucson *Unified Development Code (UDC)* sections applicable to this appeal include, in part, the following:

Section 4.7.8 *Residence Zone (R-1)* and Table 4.8-2: *Permitted Uses – Urban Residential Zones* which provides the use criteria in the R-1 zone;

Section 4.7.15 *Office Zone (O-3)* and Table 4.8-3: *Permitted Uses – Office Zones* which provides the use criteria in the O-3 zone;

Section 8.7.3 *Flexible Lot Development (FLD)*, which provides the standards for development when utilizing this option;

Section 1.5.1 *Zoning Determinations and Zoning Certifications by the Zoning Administrator* which provides that a party of record may appeal a zoning determination;

Section 1.6.1 *Conflict with Ordinances, Regulations, or Permits* which provides resolution for conflicts of provisions within the UDC; and

Section 3.10.2 *Appeals*, which provides for the Board of Adjustment to hear and decide on appeals made to the ZA's determination.

GENERAL DEVELOPMENT INFORMATION

Zoning and Land Use

SITE: ZONED R-1, O-3; (proposed single-family residential)

North: Zoned R-1; (single-family residential)

South: Zoned O-3; (multi-family residential)

East: Zoned O-3; (medical service)

West: Zoned R-1, O-3; (single & multi-family residential)

FLEXIBLE LOT DEVELOPMENT OPTION - UDC SECTION 8.7.3

A. Purpose

The purpose of the Flexible Lot Development (FLD) is to provide greater flexibility and creativity in the design of residential development by:

- 1. Providing incentives to achieve community goals, such as historic and archaeological preservation, preservation of native vegetation, development within low-income areas, and in-fill housing projects;*
- 2. Implementing the goals and objectives of the General Plan, Area Plans, and Neighborhood Plans;*
- 3. Providing open space that is usable and includes suitably located active and passive recreational amenities, such as trails, walking paths, picnic areas, and playgrounds;*

4. *Providing for visual, and where achievable, physical connections to open space areas on adjacent properties;*
5. *Efficiently using land and public facilities by means of a more economical arrangement of buildings, circulation systems, land uses, and utilities;*
6. *Preserving to the greatest extent possible existing Natural Undisturbed Open Space, environmentally sensitive areas, and landscape features and amenities, such as significant topography, protected peaks and ridges, natural vegetation, washes, riparian areas, and floodplains, and integrating such features with structures and other improvements;*
7. *Coordinating architectural styles, building forms, and building relationships within the development and with surrounding land development;*
8. *Providing high-quality sustainable development within the City that incorporates “green building” techniques such as water harvesting, solar access, and passive solar orientation;*
9. *Mitigating the urban heat island effect by requiring such measures as canopy trees throughout the FLD project and other acceptable mitigation efforts; and,*
10. *Creating incentives for appropriate urban infill development on lots with site constraints.*

C. General Development Criteria

1. Conformance with the General Plan and other Applicable Plans

An FLD shall be in conformance with the General Plan and any of its components, including any applicable adopted area and neighborhood plans.

2. Applicability of General UDC and Technical Standards Manual Requirements
Except as provided in this section, all applicable standards of the UDC and Technical Standards Manual apply to FLDs.

ZONING ADMINISTRATION CONSIDERATIONS

On November 10, 2025, the appellant requested a Zoning Administrator Determination (ZAD) seeking clarification regarding which standards apply when reviewing FLD applications, particularly when there are conflicts among the General Plan, the Tumamoc Are Plan (TAP), and the UDC. On January 22, 2026, the Zoning Administrator determined that the prior determination under case T19SA00010 (Exhibit 2) is directly relevant to this case and therefore General Plan and Area Plan policies should not be treated as binding zoning rules for FLDs, and under Arizona law, the General Plan and Area or Neighborhood Plans are not zoning laws, and finally, the UDC is the City’s enforceable land use law which provides FLDs flexibility as it applies to UDC dimensional and design standards. This prior Determination from 2019 was appealed to the Board of Adjustment and was upheld under case #T19SA00062. The case was then appealed to Pima County Superior Court, resulting in the Board of Adjustment case being upheld and the petition dismissed on

August 5, 2019. The City Attorney's Office has advised that the 2019 Arizona Superior Court case set the legal precedent that General Plans and Area Plans are not enforceable zoning documents, and this precedent was used in compiling the current determination.

The purpose of the FLD is to provide greater flexibility and creativity in the design of residential development (UDC Section 8.7.3.A). The FLD General Development Criteria (Section 8.7.3.C.1) states that an FLD shall be in conformance with the General Plan (Plan Tucson) and any of its components, including any applicable adopted area and neighborhood plans. The primary issue of this appeal appears to be that "the purpose statement used in the 2019 determination, and consequently this determination, creates a misleading narrative that an FLD simply affords creativity and flexibility for developers without including the areas "by" which that creativity and flexibility should be applied for community benefit."

This staff report seeks to clarify the Determination as follows: 1) that conformance with plan policies does not mean they are enforceable zoning standards nor should it limit the flexibility the UDC intentionally grants to FLDs; 2) per Arizona law and the UDC, the General Plan and Area Plans are not zoning laws but policy guides that inform zoning decisions but do not regulate land use; and 3) UDC § 1.6.1 only applies when there is a conflict between UDC provisions.

DISCUSSION

The ZAD request included a request for clarification on the following sections of the UDC, and included a rationale for how they should be applied.

UDC §1.6.1 — *Conflict with Ordinances, Regulations, or Permits* "If any provisions within the UDC conflict, the most restrictive as determined by the Zoning Administrator shall apply, unless otherwise provided."

UDC §8.7.3.C.1 — *Conformance with the General Plan and other Applicable Plans* "An FLD shall be in conformance with the General Plan and any of its components, including any applicable adopted area and neighborhood plans."

UDC §8.7.3.C.2 — *Applicability of General UDC and Technical Standards Manual Requirements* "Except as provided in this section, all applicable standards of the UDC and the Technical Standards Manual apply to FLDs."

In response, the issued ZAD clarified these items as outlined below. This was based upon the prior determination from 2019.

1. General Plan and Area Plan policies should not be treated as binding zoning rules for Flexible Lot Developments (FLDs). Although UDC § 8.7.3.C.1 requires FLDs to be "in conformance" with these plans, that requirement does not turn plan policies into enforceable zoning standards or limit the flexibility the UDC intentionally grants to FLDs.
2. Under Arizona law and the Tucson UDC, the General Plan and Area or Neighborhood Plans are planning documents, not zoning laws. State statutes, City code, and court cases recognize these plans as policy guides that inform

zoning decisions but do not regulate land use. The UDC, adopted by ordinance, is the City's enforceable land use law.

3. Because of this, there is no actual conflict within the UDC that would require applying the "most restrictive standard" under UDC § 1.6.1. The flexibility built into the FLD regulations is deliberate and applies to UDC dimensional and design standards. Treating Area Plan policies as mandatory zoning requirements would replace adopted zoning law with planning guidance and undermine the purpose of the FLD ordinance.

Lastly, UDC § 1.6.1, which applies when there is a conflict between UDC provisions, not when there are perceived conflicts between the provisions of the UDC and an area plan or the General Plan. Section 1.6.1 does not apply in this case because there is not a conflict between two provisions of the UDC.

The appellant has provided additional arguments in their appeal materials regarding the content of the determination. However, the Board's purview in this case is to whether the ZAD should be appealed, and not to decide on other matters of applicability of the UDC or ARS.

The additional arguments that were provided that are not relevant to this appeal are the following points listed in the appeal application:

1. Compliance with UDC 1.5.1(C)(3)
2. 2019 ZAD Improper Reference to Purpose Statement
3. Current Determination Produces a Counterintuitive Result
4. Applicability of Phoenix Homeowners Association vs. Scottsdale Municipal Airport

Legal Analysis

Pursuant to A.R.S. § 11-816 and UDC § 3.10.2(A)(1), the City of Tucson has authorized the Board of Adjustment to hear appeals of the Zoning Administrator's interpretation of the UDC. The Board may hold a study session and shall hold a public hearing where the appellant and all parties in interest may present in support and/or in protest of the determination. During the public hearing, the Board may hear all relevant facts, circumstances and conditions affecting the appeal, and may call for questions from members of staff. Upon closing of the public hearing, the Board may reverse, affirm or modify the decision being appealed and may impose conditions necessary and appropriate to implement the UDC (UDC § 3.10.2.D). The Board may also take the matter under advisement for later consideration or may defer action if additional evidence is needed or further study is required.

Conclusion

The prior determination issued January 10, 2019 (T19SA00010), is relevant to this appeal and as such, the same determination applies in this case. This determination was appealed to the Board of Adjustment and was upheld under case C10-19-08 (T19SA00062). The case was then appealed to Pima County Superior Court, resulting in the Board of Adjustment case being upheld and the petition dismissed on August 5, 2019. It is the City's opinion that the prior case history is directly relevant and has been thoroughly vetted through the various decision-making and appeal bodies.

PLANNING & DEVELOPMENT SERVICES RECOMMENDATION

Staff recommends upholding the Zoning Administrator's Determination

Mark Castro, Principal Planner
for
Elisa Hamblin, AICP
Deputy Director
Acting Zoning Administrator

EH:mc: s/zoning administration/ba/2602.docx

Attachments:

Exhibit 1 ZAD Case No. TZ-CMP-1125-00197
Exhibit 2 ZAD Case No. T19SA00010



PLANNING AND
DEVELOPMENT
SERVICES
DEPARTMENT

ZONING
ADMINISTRATION

January 22, 2026

Shana West
411 N Camino Santiago
Tucson, AZ 85745

Sent via email to: shana010west@gmail.com

SUBJECT: Zoning Administrator Determination
"Enclaves at Tumamoc" TD-DIV-0625-00069
1802 W Saint Marys Rd
Activity # TZ-CMP-1125-00197

Dear Ms. West:

I am in receipt of your letter dated November 10, 2025 which requests clarification regarding which standards apply when reviewing Flexible Lot Development (FLD) applications, particularly when there are conflicts among the General Plan, the Tumamoc Area Plan (TAP), and the Unified Development Code (UDC).

This letter serves as a response and formal Determination pursuant to Unified Development Code (UDC) 1.5.1.A which states *"The Zoning Administrator renders a final decision and determination in accordance with this section when an determination of the substantive provisions of the UDC or the application of substantive zoning provisions in the zoning certification of a site plan, tentative plat, or final plat is requested."*

Request

In your letter you state that for Flexible Lot Development (FLD) applications, compliance with the General Plan and applicable area or neighborhood plans is mandatory and enforceable as part of the zoning code, not optional or advisory. Because the UDC explicitly requires FLDs to conform to these plans, any conflict between plan policies and UDC or Technical Standards Manual provisions must be resolved by applying the most restrictive standard, as required by UDC Section 1.6.1.

You further contend that FLDs are intended to advance community goals, rather than simply provide regulatory flexibility. Therefore, projects that do not meaningfully fulfill the stated purpose of FLDs should not receive the flexibility or incentives associated with this development type.

In this framework, you believe conflicts between the General Plan or Area Plan and other UDC provisions are effectively internal UDC conflicts, requiring stricter standards to prevail. As a result, the development in question should undergo further review and potentially

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Telephone: (520) 791-5550 - Fax: (520) 791-4340
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Email: DSD_Zoning_Administration@tucsonaz.gov

additional requirements to ensure full conformity with adopted plans and the core purpose of the FLD ordinance.

Analysis

This Determination request has been reviewed in consideration of a prior Determination issued on January 10, 2019 under case #T19SA00010 (see attached). This prior Determination was appealed to the Board of Adjustment and was upheld under case #T19SA00062. The case was then appealed to Pima County Superior Court, resulting in the Board of Adjustment case being upheld and the petition dismissed on August 5, 2019.

It is the City's opinion that the prior case history is directly relevant and has been thoroughly vetted through the various decision-making and appeal bodies. As such, the same Determination has been made in this case, as summarized 1-3 below.

1. General Plan and Area Plan policies should not be treated as binding zoning rules for Flexible Lot Developments (FLDs). Although UDC Section 8.7.3.C.1 requires FLDs to be "in conformance" with these plans, that requirement does not turn plan policies into enforceable zoning standards or limit the flexibility the UDC intentionally grants to FLDs.
2. Under Arizona law and the Tucson UDC, the General Plan and Area or Neighborhood Plans are planning documents, not zoning laws. State statutes, City code, and court cases recognize these plans as policy guides that inform zoning decisions but do not regulate land use. The UDC, adopted by ordinance, is the City's enforceable land use law.
3. Because of this, there is no actual conflict within the UDC that would require applying the "most restrictive standard" under UDC Section 1.6.1. The flexibility built into the FLD regulations is deliberate and applies to UDC dimensional and design standards. Treating Area Plan policies as mandatory zoning requirements would replace adopted zoning law with planning guidance and undermine the purpose of the FLD ordinance.

Lastly, UDC section 1.6.1, which applies when there is a conflict between UDC provisions, not when there are perceived conflicts between the provisions of the UDC and an area plan or the General Plan. Section 1.6.1 does not apply in this case because there is not a conflict between two provisions of the UDC.

This Determination shall be considered precedent for future cases regarding the interpretation of UDC Section 8.7.3.C.1.

Should you require further zoning information regarding this matter, please contact me via e-mail at Elisa.Hamblin@tucsonaz.gov or my direct telephone number (520) 633-3020.

This determination may be appealed to the Board of Adjustment per UDC Section 1.5.1.E. Please contact Mark Castro for questions about the appeal process via email at Mark.Castro@tucsonaz.gov or by telephone at (520) 837-4979.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elisa Hamblin', written in a cursive style.

Elisa Hamblin, AICP
Deputy Director
Acting Zoning Administrator

Cc:
Koren Manning, PDSO Director
Roi Lusk, City Attorney
Joe Andrews, Principal Assistant City Attorney



CITY OF
TUCSON

PLANNING AND
DEVELOPMENT
SERVICES
DEPARTMENT

ZONING
ADMINISTRATION
DIVISION

January 10, 2019

Carl Sammartino
Sammartino Law Group, P.L.L.C.
5240 East Pima Street
Tucson, Arizona 85712

SUBJECT: FLD for Mountain Enclave (DP18-0201)
3401 N Fremont Avenue, Tucson, Arizona
Pima County Tax Parcel Numbers: 113-04-0380, 113-040-039B,
and 113-04-269E and 113-04-2700
Zoning Administrator Determination
Activity # T19SA00010

Dear Mr. Sammartino:

Thank you for your letter in which you requested a Zoning Administrator Determination on the appropriate density for Mountain Enclave subdivision, a proposed Flexible Lot Development (FLD) DP 18-0201. You assert that per UDC 8.7.3.C.1, the FLD for the Mountain Enclave subdivision shall adhere to the Northside Area Plan (NAP); and in accordance with the NAP Residential Subgoal policy 2(b) and policy 2(c) (page 10), the Mountain Enclave subdivision is limited to low-density residential, not to exceed an average of 6 RAC (residences per acre).

The purpose of the Flexible Lot Development (FLD) is to provide greater flexibility and creativity in the design of residential development (UDC Section 8.7.3.A). The General Development Criteria for the FLD (Section 8.7.3.C) states that an FLD shall be in conformance with the General Plan and any of its components, including any applicable adopted area and neighborhood plans.

The general development criteria also include standard and maximum density options which are listed in the Dimensional Standards Table for FLDs (Table 8.7.3-1). These dimensional standards reflect the purpose of the FLD by providing greater design flexibility. Per Table 8.7.3-1, density in the R-2 zone for the standard option is 8.71 and for the maximum density option it is 22.0. The flexibility of FLD dimensional standards is to the underlying dimensional standards contained in the UDC and not to the policies of the NAP. NAP only guides in a general manner, not specific, in this instance.

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The Principal City Attorney for the City of Tucson previously addressed the topic of applicability of Neighborhood and Area Plans and the UDC.

A “general plan” (GP) is a statutorily required (ARS 9-461.05) comprehensive, long-range “general” plan that is a statement of the goals and development policies of the City. Arizona statute [ARS 9-461(2)] defines the GP as “a municipal statement of land development policies, that may include maps, charts, graphs and text that set forth objectives, principles and standards for local growth and redevelopment enacted under the provisions of this article or any prior statute.” A GP is an “aspirational guide or statement of policies and preferences.” *Fritz v. City of Kingman*, 957 P.2d 337 (Ariz. 1998). Plan Tucson (our general plan, approved in 2013) describes itself as “a long-term policy document intended to guide decisions affecting elements that shape the city, such as housing, jobs, land use, transportation, water, and energy resources. Key to the Plan are goals and policies that provide a framework to guide future actions with the understanding that how the city has grown in the past will not necessarily work in the future.”

Both “area plans” and “neighborhood plans” are types of what state law calls “specific plans,” ARS 9-461(6). “Specific plans” are defined in AZ statute as “a detailed element of the general plan.” They are defined in the City’s UDC 11.4.20 as “A detailed policy plan or regulation that implements the General Plan or any of the elements of that Plan,” and include subregional, area and neighborhood plans. Specific plans are permitted by state law, but unlike the GP, are not required (ARS 9-461.08), and there is no time frame established for when they must be revised or renewed. Specific Plans are to be based on the GP, and serve to help implement the policies, goals and objectives of the GP; or as stated in the statute, “for the systematic execution of the General Plan.” Per Plan Tucson (*see* Chapter 4, Plan Implementation and Administration, p. 4.4), specific plans serve to “provide more detailed planning to allow systematic implementation of the General Plan through the use of detailed policy direction, in some cases at the parcel level, for smaller geographic areas of the city.

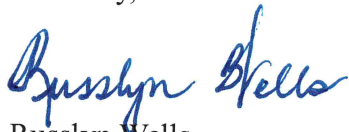
As noted above, plans are recognized both by state statutes (ARS 9-461.05 for the General Plan; ARS 9-461.08 for specific plans) and by the UDC (11.4.8, 11.4.20, 3.4.5.A.5; 3.5.3.B.2 and 3.5.3.D.3]. They have “standing” as plans – that is, they are planning documents, not laws. The City’s land use code, the UDC, is the codification of the City’s land use laws and regulations (with its

provisions, and any amendments thereto, adopted by Ordinance, and per the statutorily required process for land use laws as set forth in ARS 9-462 *et seq.*]. Plans (including both the GP and specific plans) are statements of policy, goals and objectives; and while zoning laws (including rezoning ordinances) must be consistent with and conform to the adopted plans, plans are “not to be confused with the exercise by a municipality of its zoning powers,” which is done through the City’s zoning ordinances, including the UDC. *See Northeast Phoenix Homeowners’ Ass’n v. Scottsdale Municipal Airport*, 130 Ariz. 487 (App. 1981).

In conclusion, the Northside Area Plan contains policies rather than laws and these policies provide guidance primarily for rezoning applications and do not supercede the regulations contained in UDC 8.7.3.C.1 allowing flexibility in the development of lots.

Should you require further information regarding this property, please contact me via e-mail at Russlyn.Wells@tucsonaz.gov or by telephone at 520-837-4948.

Sincerely,



Russlyn Wells
Acting Zoning Administrator

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