



DENVER ZONING CODE (DZC) DETERMINATION FOR AN UNLISTED TEMPORARY USE FOR PARKING IN A M-IMX-12 ZONE DISTRICT

EFFECTIVE DATE OF DETERMINATION: JULY 1, 2025

SUMMARY

The Cracker Barrel restaurant located at 9111 E. 40th Ave in the M-IMX-12 zone district has requested an unlisted temporary use determination for a use that is not addressed directly in the Denver Zoning Code:

The specific use proposed involves preparing a dirt lot adjacent to an existing, permanent parking lot. The proposal would allow temporary parking on the vacant site after it is improved with fencing, graded with ¾ inch RAP (recycled asphalt) with a minimum 4" thickness, and concrete wheel stops. Although permanent parking is completed for the pad site on which the restaurant is located, the demand for parking at the subject property regularly exceeds the supply available. The proposed temporary parking use will allow underutilized vacant parcels to support the permitted primary eating and drinking establishment already operating on the subject property while the rest of the zone lot is built out. Under this determination, the temporary parking area will not be subject to meeting all design standards for parking areas in the Denver Zoning Code but will be required to meet certain minimum standards provided at the end of this document.

While temporary Special Event parking is identified as a listed temporary use for the M-IMX-12 zone district in the Denver Zoning Code, this request could not be considered a "special event" due to the frequency of the proposed use and the duration of time requested. No other temporary uses are defined for an M-IMX zone district that would allow for longer term temporary parking while waiting for future phases of the development to be completed that will include additional permanent parking. This determination authorizes temporary parking for a permitted primary use in the M-IMX zone districts as a Temporary Unlisted Use in compliance with Section 12.4.6 of the Denver Zoning Code.

UNLISTED TEMPORARY USE FOR PARKING IN M-IMX - SUMMARY OF STANDARDS

This determination applies to temporary parking in the M-IMX zone districts. There is a clear public benefit to temporarily allowing parking to accommodate demand at a new business and preventing customer parking on unimproved, vacant dirt areas. The intent of this temporary use is to provide a suitable option to alleviate parking demand during construction. This temporary unlisted use determination will allow temporary parking to be utilized when it abuts an established parking area serving a permitted primary use during construction for 12 months with an option to request an

additional 12-month extension as the rest of the development builds out. After the total of 24 months, the applicant shall upgrade all parking areas to meet the design standards of the Denver Zoning Code.

This unlisted temporary use, as generally described, will hereafter be referenced as a “Temporary Parking use.” A Temporary Parking use is not specifically listed as a permitted temporary use in the Denver Zoning Code; therefore, the Zoning Administrator must determine if the use is allowed.

APPLICABLE RULES AND REVIEW CRITERIA FOR DETERMINING AN UNLISTED TEMPORARY USE

UNLISTED TEMPORARY USE – DZC, SECTION 11.11.1

Unlisted temporary uses, when permitted in a specific zone district, are governed by the Denver Zoning Code (“DZC”), Section 11.11.1, *Unlisted Temporary Uses*, which authorizes the Zoning Administrator to allow and impose limitations on an unlisted temporary use after review according to the procedures and review criteria in DZC, Section 12.4.6, *Code Interpretations and Determination of Unlisted Uses*.

GENERAL AUTHORITY TO DETERMINE UNLISTED USES

DZC, SECTION 12.4.6

According to DZC Section 12.4.6.1, the Zoning Administrator may determine whether a specific unlisted use, including unlisted temporary uses, “may be permitted in one or more zone districts, and what type of use review is required.”

The Zoning Administrator is directed to:

1. Review and evaluate the application in light of this Code, the Comprehensive Plan, established administrative practices and past interpretations, the potential for establishing a precedent with the interpretation, and any other relevant policy and regulatory documents;
2. Review and evaluate the application with consideration of the general rules of interpretation specified in this Section 12.4.6.3.F, as applicable; and
3. Consult with the Manager, City Attorney, other agencies and staff, as necessary.

DZC, SECTION 12.4.6.3.D.

In making a use determination, the Zoning Administrator may impose reasonable conditions on an unlisted use after consideration of, “at a minimum, the compatibility of the use within the zone districts in which the use may be permitted, the intensity of the use, the amount and configuration of physical space occupied by the use, and the potential for adverse impacts on adjacent properties” (DZC, Section 12.4.6.3.E.2.). As part of the use determination, the Zoning Administrator must also determine which zoning permit use review procedure will apply, such as Informational Notice (“ZPIN”), Special Exception Review (“ZPSE”), or administrative review without notice or hearing (“ZP”). Determining the use review procedure “shall be based on consideration of the zoning procedure(s) applicable to similar land uses or

subject matter, and/or the degree to which the zoning procedure may inform mitigation of possible adverse impacts” from the subject use (DZC, Section 12.4.6.3.E.3.).

REVIEW CRITERIA FOR DETERMINING UNLISTED TEMPORARY USES

Denver Zoning Code Section 12.4.6.4 specifies the criteria against which the Zoning Administrator must review all requests for determining whether an unlisted temporary use should be allowed. The Zoning Administrator must find that the request satisfies all the relevant review criteria before permitting the unlisted use. If the Zoning Administrator cannot find the proposed use satisfies the review criteria, then the only regulatory path for permitting such use is to amend the text of the zoning code to specifically list and allow the use.

In sum, an unlisted use may only be permitted through the process established in DZC Section 12.4.6 if the determination is: “1. Consistent with the intent of this Code; and 2. Consistent with the intent of the subject Neighborhood Context and zone district(s), and with the intent of any specific Code provision(s) at issue.” (DZC, Section 12.4.6.4.A.)

In addition, the Zoning Administrator must find that the “proposed use has a character and impact that are similar in nature, function, and duration to the other uses permitted in the zone district(s)” by assessing all relevant characteristics of the proposed use, including without limitation (DZC, Section 12.4.6.4.B.1.):

“The type, size, and typical massing of buildings and structures associated with the unlisted use;

“Transportation requirements, including the modal split for people and freight, by volume type and characteristics of traffic generation to and from the site;

“Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity;

“The amount and nature of any external effects generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation and fumes;

“The type and extent of impacts on adjacent properties created by the proposed use in comparison to impacts from other uses permitted in the zone district.”

ANALYSIS

CONSISTENCY WITH DENVER ZONING CODE’S INTENT – DZC §12.4.6.4.A.1

The overarching purpose of the Denver Zoning Code is to “implement Denver’s Comprehensive Plan and guide orderly development of the City that preserves and promotes the public health, safety, prosperity, and welfare of its inhabitants.” DZC, Section 1.1.1, *Purpose*. To achieve its purpose, the intent of the Denver Zoning Code is to strike a balance between conservation and development, to achieve design excellence in the built environment, and to guide Denver toward a prosperous and sustainable future (DZC, Section 1.1.2., *Intent*).

In this case, Temporary Parking will mitigate parking demand during construction of permanent parking on the pad sites to the east and west of the subject property. A high volume Eating and Drinking Establishment such as the Cracker Barrel relies on parking being available near it to accommodate demand. As it is located within a master planned development and is one of the first pads to be built out, there are no other parking alternatives available onsite or nearby. More generally, in the M-IMX zone district, the Temporary Parking use will allow productive use of vacant pad sites prior to development of permanent parking. The interim use of these areas supports the development of the master planned development by allowing use of adjacent land to meet current demand until permanent development can take place. This added flexibility during construction will benefit first-in tenants that begin operations while construction is still taking place around them.

During construction on a large, master-planned site, this temporary use will allow tenants and owners to collaborate to distribute parking demand and maintain safety. With the proposed change, customers will have the ability to park closer to their destination, rather than attempting to park off-site or on dirt lots.

Use limitations are provided at the end of this document which further protect the public health, safety, prosperity, and welfare by mitigating risk of dust. Further, limitations on the length of time allowed for this temporary use will require upgrades to the parking lot after one extension. Accordingly, I find that the proposed Unlisted Temporary Use of Parking at this location is consistent with the overall purpose and intent of the Denver Zoning Code.

CONSISTENCY WITH INTENT OF SUBJECT NEIGHBORHOOD CONTEXT AND ZONE DISTRICT – DZC §12.4.6.4.A.2

The Temporary Parking use will only be allowed in the M-IMX zone districts. Parking of Vehicles is allowed as a primary use under the Commercial Sales, Services, & Repair primary use classification in the three M-IMX zone districts (M-IMX-5, -8, and -12). Parking is consistent with the Master Planned Context “for developing areas that will develop or redevelop in phases over an extended period of time into entirely new residential and mixed used neighborhoods covering multiple blocks.” This temporary use supports the development and redevelopment of master planned projects by offering a greater degree of flexibility in allowing for temporary parking in areas that are under construction or will be redeveloped. M-IMX zone districts are industrial mixed-use districts “intended to accommodate a variety of industrial, commercial, civic and residential uses...” Given that the Temporary Parking use will be allowed to support a permitted, primary nonresidential uses and will only be allowed at this location for up to a total of 24 months, it is expected to be consistent with the neighborhood context and zone districts. This is meets the intent of the neighborhood context and zone district to support development and redevelopment.

COMPARISON TO OTHER PERMITTED TEMPORARY USES IN M-IMX-12

As described above, the Zoning Administrator must find that the proposed temporary use “has a character and impact that are similar in nature, function, and duration to the other uses permitted in the zone district(s)” by assessing all relevant characteristics of the proposed use (DZC, Section

12.4.6.4.B.1). Two temporary uses allowed in the M-IMX zone districts are similar to the proposed temporary use:

- **Parking Lot Designated for a Special Event** is a temporary use permitted with limitations under DZC Section 11.11.13: This use authorizes the use of parking lots associated with nonresidential uses to serve temporary special events such as carnivals or other gatherings. In the Mixed Use Commercial zone districts, such as the M-IMX zone districts, these temporary parking areas are required to be surfaced with an all-weather surfacing material. In M-IMX, a zoning permit for this use is valid only during the designated special events that are being served. This means that a 90-day period is required between permitted special events – a key difference between this use and the proposed use. The Temporary Parking use will be allowed to operate continuously for a period of 12 months with the possibility of one 12-month extension.
- **Temporary Outdoor Retail Sales** is a temporary use permitted with limitations under DZC Section 11.11.11: This use authorizes sale of retail goods on a temporary basis for events such as farmers markets and seasonal fairs. This use utilizes a vacant or underused area for retail activity, while the proposed use would only generate trips for the primary nonresidential use it serves. Similarly to the Parking Lot Designated for a Special Event, this use has time limits on it.

Compared to other similar permitted temporary uses, the proposed Temporary Parking use is similar in function, with activity temporarily utilizing an underused space on a short-term basis. In terms of character, the proposed Temporary Parking use is expected to generate less intense activity than the other two similar uses, only the parking of vehicles, rather than special event type activity. Finally, in duration, the proposed use would be in operation for longer than the two similar uses, but the greater length of time is clearly balanced by the more passive type of activity (e.g., parked vehicles compared to outdoor, active retail sales). Accordingly, I find that the proposed temporary use is likely to have little to no potential for adverse impacts on its neighbors from daily operations.

CONCLUSION

Based on the analysis described above, I find that the potential for adverse impacts is minimal from a Temporary Parking use as accessory to the primary use of Eating and Drinking Establishment at the specific location of 9111 E. 40th and across the M-IMX zone districts. This holds true particularly when compared to other temporary uses permitted in the zone districts where this use category is allowed.

FINAL USE DETERMINATION AND DECISION

Based on the above analysis and according to the review criteria for unlisted use determinations in DZC, Section 12.4.6, I find that the proposed Temporary Parking use:

1. Is consistent with the intent of the Denver Zoning Code;
2. Is consistent with the intent of the neighborhood contexts and zone districts of the Denver Zoning Code; and
3. Is substantially similar in character and impact to other permitted primary and temporary uses.

I also find that the type and extent of impacts on adjacent properties by a proposed Temporary Parking use is likely no different than other permitted temporary uses allowed in the M-IMX zone districts.

As part of the unlisted use determination, the Zoning Administrator must also determine the applicable zoning permit use review procedure to apply to the unlisted use. I determine that a Zoning Permit ("ZP") review will be required for all requests to establish a Temporary Parking use, according to the review process stated in DZC, Section 12.4.1, *Zoning Permit Review*.

In conclusion, my final decision is to **APPROVE** the proposed Temporary Parking use as an "unlisted temporary use," according to the following **USE DEFINITION, APPLICABILITY LIMITS, and USE & PERMIT LIMITATIONS**:

1. **DEFINITION OF UNLISTED TEMPORARY USE:** The use at issue shall be referred to as "Temporary Parking use," which shall mean:
 - a. A parking area that is not fully improved per standards found in the Denver Zoning Code or Master Development plan and is not intended to be used as permanent parking.
2. **APPLICABILITY OF UNLISTED USE DETERMINATION:** This use determination and final decision shall apply to allow the Temporary Parking uses in the M-IMX zone districts established under the Denver Zoning Code.
3. **USE & PERMIT LIMITATIONS:** The application for a zoning permit for a Temporary Parking use shall comply with the following limitations:
 - a. The Temporary Parking use may only be permitted as an expansion of a permitted primary nonresidential use in the M-IMX zone districts (Denver Zoning Code Section 11.12.9).
 - b. A Temporary Parking use may be established only after permanent parking for the primary use being served has been constructed meeting the required design standards.
 - c. The following design standards shall apply to the Temporary Parking use:
 - (1) **Drainage and Surface Materials**

The Temporary Parking Area shall:

 - a. Be graded for proper drainage; and
 - b. Be provided with an all-weather surface material of either:
 1. Asphalt,
 2. Asphaltic concrete,
 3. Concrete, or
 4. Any equivalent material as approved by the Zoning Administrator. Any "equivalent material" shall be an all-weather surface with a minimum of 4" thickness that provides proper drainage and is the equivalent of asphalt, asphaltic concrete or concrete. This includes, but is not limited to, 3/4 inch recycled asphalt pavement (RAP) and 3/4 inch driveway gravel (crushed aggregate).
 - (2) **Vehicle Parking Design**
 - a. Parking Space Standard Dimensions

1. All required parking spaces shall have a minimum width of 8.5 feet and a minimum length of 17.5 feet
 2. Surface Off-Street Parking Areas shall be provided with curbs or wheel stops located a minimum of 2 feet from any sidewalk or pedestrian walkway
- b. Minimum Internal Drive Dimensions
1. Internal drives shall be a minimum width of 10 feet for one-way traffic and shall be a minimum width of 20 feet for two-way traffic

(3) Access

Vehicles will access the Temporary Parking from the abutting, established permanent parking area.

(4) Temporary Parking Area Delineation

To prevent it from being accessed from any other side other the established access drive from the permanent parking area, the Temporary Parking shall be delineated by fencing, wheel stops, or other means of maintaining the parking area boundaries.

APPEAL

This final use determination may be appealed to the Denver Zoning Board of Adjustment within 15 days from the date of this written decision, according to DZC, Section 12.4.8, *Appeal of Administrative Decision*.

Matthew Cohrs

Matt Cohrs
Interim Zoning Administrator

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