

ITEM # 16
DATE 01/13/09

COUNCIL ACTION FORM

SUBJECT: ZONING ORDINANCE TEXT AMENDMENT REMOVING THE REQUIREMENT FOR THE PLANNING & ZONING COMMISSION TO MAKE RECOMMENDATIONS TO THE ZONING BOARD OF ADJUSTMENT ON SPECIAL USE PERMIT APPLICATIONS

BACKGROUND:

The City of Ames has a long history of requiring that two boards review Special Use Permit (SUP) applications: The Planning & Zoning Commission and the Zoning Board of Adjustment (ZBA). This requirement was carried through during the most recent comprehensive Zoning Ordinance update in 2000. This past summer, during City staff's presentation of the new development application processing schedule to local developers, it was suggested that the two board review is redundant and not necessary. This concern of local developers was forwarded to the City Council during their July review of the new processing schedule. The Council subsequently referred the concern to City staff. City planning staff is now addressing that concern by way of a text amendment after consulting with legal staff on the issue.

Applicable Laws, By-laws and Regulations. Ames Municipal Code Chapter 29.1503 (3)(a) states the following role of the Planning & Zoning Commission for Special Use Permits:

"The application, along with all required data, shall be transmitted to the Planning and Zoning Commission for review and recommendation. Such review by the Commission shall not be concluded until consideration is given to comments at a public hearing that may be part of a regularly scheduled meeting. Notification of the public hearing shall be made by mail and posting, in accordance with Sections 29.1500(2)(d)(I) and (iii) above. Within 30 days of the hearing, the Planning and Zoning Commission shall submit a written recommendation to the Zoning Board of Adjustment setting forth the reasons for its recommendation of acceptance, denial, or modification of the application."

The review criteria for Special Use Permits defined in Section 29.1503(4) are the same for both the Planning and Zoning Commission and the Zoning Board of Adjustment. The criteria require findings addressing the following:

- a. General Standards
- b. Residential Zone Standards
- c. Commercial Standards
- d. Special Use Permits for Functional Families
- e. Conditions

Iowa Code 414.12(2) gives general direction regarding the powers of the Zoning Board of Adjustment, citing that “special exceptions to the terms of the ordinance” are one of the powers of the ZBA. The City of Ames legal department confirms that this state code provision is the basis for both the conditional and the special use permits that the City of Ames reviews.

Almost every zoning district within Ames Municipal Code has at least one land use which requires a Special Use Permit. Some districts have several land uses requiring Special Use Permits. Some of the land uses that require Special Use Permits in certain zones are **less commonly** applied for, such as:

- Detention Facilities
- Schools
- Radio & TV Broadcast Facilities

However, some are **more commonly** applied for, such as:

- Churches
- Child Day Care Facilities
- Salvage Yards
- Cellular Towers

The only other code provision for a Special Use Permit is in Section 29.307(2)(b), which allows a Special Use Permit for an applicant who is requesting to change from a valid nonconforming use to a different nonconforming use. This request could occur in any zone.

Staff presentations to the Planning and Zoning Commission and Zoning Board of Adjustment are essentially the same at both levels. Although separate hearings and discussions are held, the same issues are discussed. Typically, attendance is higher at the ZBA meetings, perhaps because the public knows that final action occurs by the ZBA.

There is no indication that removing this requirement is in conflict with State of Iowa laws. The state law pertaining to planning commissions, in Iowa Chapter 414.6 charges the “zoning commission” with the duty of “recommending the boundaries of the various districts.” It also charges the commission with supplements or changes to those boundaries. Additionally, according to Ames Municipal Code 29.1402, the Planning and Zoning Commission recommends to City Council amendments to the Zoning Ordinance (which includes the map), as well as prepares and adopts the Land Use Policy Plan.

Conclusions. Removing the requirement for the Planning and Zoning Commission’s recommendation is not in conflict with any state or local laws. The Commission’s primary duty is recommending more broad land use and development policies to City Council. At times, those policy recommendations are a result of a request on a specific property. For this reason, City staff proposes to provide a periodic summary to the Planning and Zoning Commission so that the Commission can determine if any text amendments are needed to the Zoning Ordinance as a result of excessive or redundant

applications. This will allow the Zoning Board of Adjustment to continue to operate efficiently and effectively under the policies of the Ames City Council.

Because the review criteria for Special Use Permits are the same for both boards, the holding of two hearings may be redundant. The quasi-judicial role of the Zoning Board of Adjustment is more attuned to reviewing the details of site plans and also considering the requirement for any special mitigating conditions to be placed on the permit.

The current code charges the Planning and Zoning Commission with the review of Major Site Development Plans and also Preliminary Plats of Major Subdivisions. This proposed amendment would not affect the Commission's review of those items.

Public Impact. It is not anticipated that there will be a significant public impact. However, there will be less review time of the Special Use Permit; therefore, it is likely that a decision will be rendered sooner. This will likely result in a favorable response from applicants. Since two public hearings are currently being held for Special Use Permits, there will be less chance for the public to comment. However, as stated before, higher attendance is more common at the Zoning Board of Adjustment hearing, which is the hearing in which final action is taken.

Proposed Amendments. The proposed amendments consist of the words "Planning & Zoning Commission" being stricken from the Special Use Permit procedure section of the Zoning Ordinance. The sections are 29.307(2)(b), 29.1503(3)(a)&(b), 29.1503(4)(a)&(b), 29.1503(4)(c), and 29.1503(4)(d)(ii).

Also proposed is a slight modification of the primary duties of the Planning and Zoning Commission in Section 29.1402:

The Planning and Zoning Commission is appointed by the Mayor with the advice and consent of City Council to serve as an independent advisory body to the Council and, periodically, to the Zoning Board of Adjustment. The Commission is responsible for the preparation and adoption of the official Land Use Policy Plan of the City and gives advice and recommendations on matters involving amendments to the City's Zoning Ordinance and historic preservation ordinance and guidelines. The Commission reviews and gives advice on subdivisions occurring within the City and within the extraterritorial jurisdiction of the City.

The attached ordinance contains all of the proposed amendments to the sections noted above.

Consistency with the Land Use Policy Plan. The proposed amendment is not in conflict with the Land Use Policy Plan, because it does not remove the Planning & Zoning Commission's role of preparing and adopting the Land Use Policy Plan.

Recommendation of the Planning & Zoning Commission. At its meeting of December 17, 2008, with a vote of 5-0, the Planning and Zoning Commission recommended approval of the proposed text amendments to Sections 29.307(2)(b), 29.1402, 29.1503(3)(a)&(b), 29.1503(4)(a)&(b), 29.1503(4)(c), and 29.1503(4)(d)(ii), removing the requirement for the Planning and Zoning Commission to make recommendations to the Zoning Board of Adjustment on Special Use Permit applications. No one from the public spoke on this issue.

ALTERNATIVES:

1. The City Council can approve the amendments to Sections 29.307(2)(b), 29.1402, 29.1503(3)(a)&(b), 29.1503(4)(a)&(b), 29.1503(4)(c), and 29.1503(4)(d)(ii), removing the requirement for the Planning and Zoning Commission to make recommendations to the Zoning Board of Adjustment on Special Use Permit applications.
2. The City Council can retain the existing language in the Code, thereby retaining the Commission's review of Special Use Permits.
3. The City Council can refer this back to the staff for additional analysis or modifications.

MANAGER'S RECOMMENDED ACTION:

Based upon the review of applicable state and local codes, City staff believes that this amendment is not in conflict with any existing regulations, and will serve as a reduction in staff and commission time spent on Special Use Permit applications, which will subsequently enhance the existing development application review schedule. As a result, this may improve the time availability that the Commission can dedicate toward broader planning and zoning topics and studies. The concept of this proposed amendment originated from the public and is being recommended as a response to both the public comment and also the City Council's referral of the comment.

Therefore, it is the recommendation of City Manager City that the City Council adopt Alternative #1, which is to approve the amendments to Sections 29.307(2)(b), 29.1402, 29.1503(3)(a)&(b), 29.1503(4)(a)&(b), 29.1503(4)(c), and 29.1503(4)(d)(ii), removing the requirement for the Planning and Zoning Commission to make recommendations to the Zoning Board of Adjustment on Special Use Permit applications.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY REPEALING SECTIONS 29.307(2)(b), 29.1402, 29.1503(3)(a)(b), 29.1503(4)(a)(b), 29.1503(4)(c) and 29.1503(4)(d)(ii) AND ENACTING NEW SECTIONS 29.307(2)(b), 29.1402, 29.1503(3)(a), 29.1503(4)(a)(b)(c)(d), FOR THE PURPOSE OF REMOVING PLANNING AND ZONING COMMISSION ACTION ON ZONING BOARD OF ADJUSTMENT APPLICATIONS; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by repealing Sections 29.307(2)(b), 29.1402, 29.1503(3)(a)(b), 29.1503(4)(a)(b), 29.1503(4)(c) and 29.1503(4)(d)(ii) and Enacting New Sections 29.307(2)(b), 29.1402, 29.1503(3)(a), 29.1503(4)(a)(b)(c)(d) as follows:

“Sec. 29.307 NONCONFORMITIES.

(2) (b) Change to Another Nonconforming Use. Except as provided in this Section, a nonconforming use may be changed only to a use that conforms to the Ordinance. Once changed to a conforming use, no use may revert to a nonconforming use.

The Zoning Board of Adjustment may grant a Special Use Permit to allow a change from one valid nonconforming use to a different nonconforming use, provided it is determined that:

- (i) The proposed use is in the same section 29.501(4) category of use as the current use;
- (ii) No structural alterations will be made in the building or structure containing the use that increases any nonconformity;
- (iii) The proposed use will have no greater impact on the surrounding area than the existing nonconforming use;
- (iv) Adequate parking exists for the proposed use, based on parking standards in the Ordinance; and
- (v) The proposed use is compatible with surrounding land uses, based on the hours of operation and the ability to mitigate noise and light impacts by incorporating buffering between the proposed use and surrounding land uses where necessary.

Sec. 29.1402. PLANNING AND ZONING COMMISSION.

The Planning and Zoning Commission is appointed by the Mayor with the approval of the City Council to serve as an independent advisory body to the Council. The Commission is responsible for the preparation and adoption of the official Land Use Policy Plan of the City and gives advice and recommendations on matters involving amendments to the City's Zoning Ordinance and historic preservation ordinance and guidelines. The Commission reviews and gives advice on subdivisions occurring within the City and within the extraterritorial jurisdiction of the City.
(Ord. No. 3945, 2-19-08)

Sec. 29.1503. SPECIAL USE PERMIT.

(3) **Procedure for Special Use Permits.**

(a) Zoning Board of Adjustment. The Zoning Board of Adjustment shall consider the application at a public hearing conducted as part of a regularly scheduled meeting. Notification of the public hearing shall be made by mail, posting, and publication, in accordance with Sections 29.1500(2)(d)(i), (ii) and (iii) above. The Zoning Board of Adjustment must approve, deny, or modify the Special Use Permit application within 60 days of the public hearing.

(Ord. No. 3815, 12-21-04)

Sec. 29.1503. SPECIAL USE PERMIT.

(4) Review Criteria.

(a) **General Standards.** The Zoning Board of Adjustment shall review each application for the purpose of determining that each proposed use meets the following standards, and in addition, shall find adequate evidence that each use in its proposed location will:

(i) Be harmonious with and in accordance with the general principles and proposals of the Land Use Policy Plan of the City;

(ii) Be designed, constructed, operated, and maintained so as to be harmonious in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed;

(iii) Not be hazardous or disturbing to existing or future uses in the same general vicinity;

(iv) Be served adequately by essential public facilities and services such as highways, streets, police, fire protection, drainage structure, refuse disposal, water and sewage facilities, and/or schools;

(v) Not create excessive additional requirements at public cost for public facilities and services;

(vi) Not involve uses, activities, processes, materials, equipment or conditions of operation that will be detrimental to any person, property or general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors; and

(vii) Be consistent with the intent and purpose of the Zone in which it is proposed to locate such use.

(b) **Residential Zone Standards.** The Zoning Board of Adjustment shall review each application for the purpose of determining that each proposed use in a residential zone meets the following standards, as well as those set forth in Section 29.1503(4)(a) above and, in addition, shall find adequate evidence that each use in its proposed location will:

(i) Not create excessively higher levels of traffic than the predominant pattern in the area and not create additional traffic from the proposed use that would change the street classification and such traffic shall not lower the level of service at area intersections;

(ii) Not create a noticeably different travel pattern than the predominant pattern in the area. Special attention must be shown to deliveries or service trips in a residential zone that are different than the normal to and from work travel pattern in the residential area;

(iii) Not generate truck trips by trucks over 26,000 g.v.w. (gross vehicle weight) to and from the site except for waste collection vehicles and moving vans;

(iv) Not have noticeably different and disruptive hours of operation;

(v) Be sufficiently desirable for the entire community that the loss of residential land is justifiable in relation to the benefit;

(vi) Be compatible in terms of structure placement, height, orientation or scale with the predominate building pattern in the area;

(vii) Be located on the lot with a greater setback or with landscape buffering to minimize the impact of the use on adjacent property; and

(viii) Be consistent with all other applicable standards in the zone.

(c) **Commercial Standards.** The Zoning Board of Adjustment shall review each application for the purpose of determining that each proposed use located in a commercial zone meets the following standards as well as those set forth in Section 29.1503(4)(a) above and, in addition, shall find adequate evidence that each use in its proposed location will:

(i) Be compatible with the potential commercial development and use of property planned to occur in area;

(ii) Represent the sufficiently desirable need for the entire community that the loss of commercial land is justifiable in relation to the benefit; and

(iii) Be consistent with all other applicable standards in the zone.

(d) **Special Use Permits for Functional Families.**

(i) **Purpose.** This Section is to provide for the regulation of Functional Families that may request to reside in a Single Family Dwelling, Two Family Dwelling or

Single Family Attached Dwelling. The regulations are also intended to prohibit larger groups of unrelated persons from residing in Single Family Dwellings, Two Family Dwellings, or Single Family Attached Dwellings. Larger groups of unrelated persons have frequently shown to have a detrimental affect on Single Family neighborhoods since larger groups of unrelated persons do not live as a family unit and do not have significant economic or emotional ties to a neighborhood.

(ii) Standards of Functional Families. The Zoning Board of Adjustment shall review each application for a Special Use Permit for a functional family as provided for in this section after having determined that the application meets the following standards:

- a. The functional family shares a strong bond or commitment to a single purpose (e.g. religious orders);
- b. Members of the functional family are not legally dependent on others not part of the functional family;
- c. Can establish legal domicile as defined by Iowa law;
- d. Share a single household budget;
- e. Prepare food and eat together regularly;
- f. Share in the work to maintain the premises; and
- g. Legally share in the ownership or possession of the premises.”

Section Two. Violation of the provisions of this ordinance shall constitute a municipal infraction punishable by a penalty of \$500 for a first violation and \$750 for each repeat violation.

Section Three. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Four. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this _____ day of _____, 2009.

Diane R. Voss, City Clerk
00998

Ann H. Campbell, Mayor