

Staff Report

Development Standards for Residential Zones

July 9, 2013

BACKGROUND

In light of new project concepts that are proposing novel applications of current code, staff wants to review some of the development standards for residential developments with City Council for clarification and direction purposes. There are two issues that staff feels needs to be addressed by Council; occupancy standards and subdivision requirements. The first issue involves occupancy standards and a concern about the definitions of Single Family attached dwellings and apartment dwellings and staff's current interpretation of these units. The second issue about subdivision requirements is related to the code provision which allows multiple single and two-family structures on lot of one acre or greater without the process of subdivision.

The Zoning Code establishes five residential zoning classifications that allow for four different types of residential uses: single family dwellings, two-family dwellings, single family attached dwellings and apartment dwellings. There is a fifth residential use type, "dwelling house", that is only permitted in the "RM" Residential Medium Density and "RH" Residential High Density zones, which permit up to a 5 bedroom unit. Attachment 1 identifies what use types are allowed in each residential zone and the type of approval required for such use type.

Occupancy Concern: Single Family Attached Residential Vs. Apartment Dwellings

In looking at the definitions of the residential use types, Planning staff has interpreted the difference between a Single Family Attached Dwelling and an Apartment dwelling. The two use types are defined as the following:

"Dwelling, Single Family Attached" means a single family dwelling unit in a row of at least two such units in which each unit has its own front access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common fire resistant party walls and the unit is located on a separate lot."

"Apartment Dwelling" means a dwelling containing three or more residential units. The term includes what is commonly known as an apartment building, but does not include community residential facilities or single family attached dwellings. Apartment dwellings may be occupied by families only, or by a group of unrelated persons limited to five or less per residential unit."

A couple of distinctions between the two use types are that a single family attached unit is a unit that is designed as a completely side by side unit, each of which is on an individually platted lot. The single family attached units under strict definition require a single lot for each unit and would limit the occupancy of the unit to a "Family" by definition of not more than 3 unrelated persons. According to staff's current interpretation, if an attached unit is not located on a separate lot, it by definition is not a "dwelling, single family attached" but must still be classified as a use type. The use type that then would fit this unit is

the less specific “apartment dwelling”, which by definition would allow the units on a single shared lot and would allow up to five unrelated persons to occupy such units. This would permit an increase in the number of occupants of the property while maintaining the same density of units for the site.

This issue of occupancy only applies to zones which permit the single family attached and apartment use types which include the RM, RH, FS-RL and FS-RM zones. If Council doesn’t agree with the interpretation to allow single family attached units to be considered apartments (with its larger occupancy allowance) when not located on a single platted lot (as required by definition), Council could direct staff to initiate a revision to the zoning code.

An option for addressing this concern could be a revision to the definition section of the zoning code to limit all single family attached style residential dwellings to meet the definition of a “family” (three unrelated persons), which would never allow an attached unit, whether located on separate lots or developed on one large lot, to be occupied by more than three unrelated persons.

Subdivision Concern: Multiple Buildings on a Single Lot

Another code allowance in residential districts is section 29.401(5), which states “more than one single family or two-family residential structure on the same lot of one acre or less is prohibited”. **This allows on residential lots larger than one acre more than one single family and two-family structures on a single platted lot.**

So how does this affect residential developments in terms of zoning? This allows for large parcels (more than one acre), zoned residential, to be developed with an unspecified maximum number of single family and two-family structures on a single lot when the developer chooses not to subdivide. **Without subdivision, the requirements of the subdivision code for lot and block standards, conformance with natural features, landscape standards, public street standards including public sidewalks, utility requirements for water, sanitary sewer, electric and storm water management, erosion control and also any improvement guarantees for any needed infrastructure improvements to accommodate the development are not required. Therefore, staff cannot review these proposed developments for conformance with subdivision standards.**

Depending on the development, such as in the RL zone, where only single family structures are permitted, the Council may wish to see individual platted lots for each structure, thus requiring subdivision and compliance with all the subdivision standards, such as public streets, public infrastructure for utilities, sidewalks, etc.

There may not be a concern for the overall platting of lots in RM or RH zones where apartment buildings are already permitted to have more than one building on a single lot. However, there may be other subdivision concerns in the RM or RH zones, such as the connection of public streets, access to city services or the need for protection of natural features that arise without subdivision.

A couple of options for addressing this concern could be revisions to either the zoning code or subdivision code to incorporate standards of the subdivision code for certain developments, based on a created set of criteria, that choose not to subdivide the property. This would allow the certain regulations of the subdivision code, such as public streets, sidewalks, or public infrastructure to be met while allowing the developer to maintain a single lot development.

Another option could be to simply eliminate the allowance for multiple buildings on a single lot for the RL zone so as to maintain the character of a single family neighborhood therefore requiring that all single family structures and two family structures in the RL zone are developed on individually platted lots.

PROJECT CONSIDERATIONS

In looking forward to a couple of upcoming projects as examples of the concerns being addressed, there are two projects that will be affected by the code sections previously noted; Copper Beach Development at 712 S. 16th Street, and the Breckenridge Development on the Old Ames Middle School properties.

One current project to consider as an example of the occupancy concern is the property at 712 S. 16th Street which is intended, under a previously completed courtesy review (See Attachment 2, Concept plan for Copper Beach Development), to be a mixed unit type rental development with both single family attached and apartment units. This project is already zoned Residential High Density "RH" and therefore can proceed with development based on the district allowances for RH zoning. The thing to consider in this project is that the property can be developed under the proposed use types as a single lot development, no subdivision, with a staff approved Minor Site Development Plan. **Based on the code interpretation of single family attached dwellings, as discussed previously, the project could be constructed on a single lot, without subdivision to create separate lots for each unit, and therefore the units are considered apartments, and allowed to increase the number of occupants from a "family" up to five unrelated persons, as allowed under the definition of an apartment. This will increase the number of occupants on the property while maintaining the same density of units per acre on the parcel.**

Another project currently being reviewed, and noted here as an example of the subdivision concern, is the Old Ames Middle School properties, which has submitted for rezoning of two of the three parcels (the middle parcel at 321 S. State, and the south parcel at 601 S. State) and is in the middle of a Master Plan discussion process with the neighborhood association and Iowa State University. The intent is to have a Master Plan formally submitted once discussions with the neighborhood association are completed the end of July or early August.

The old Ames Middle School sites will require rezoning from the current S-GA zoning designation, but there are many options still under review for the sites. Without knowing the proposal yet for the sites this is a bit more difficult to address, however, some of the options under the current code allowances would permit, if approved by the council for the current rezoning requests submitted, to develop the properties as a single large lot development for single family style rental units, but also allow the development to proceed without compliance with subdivision standards.

The thing to consider in this project is that the property can be developed under the current LUPP designation and RL zone as a single large lot development, with no required subdivision, with a staff approved Minor Site Development Plan. **Based on the code which allows multiple single family and two family structures on a single lot (more than 1 acre in size), as discussed previously, the project could be constructed without subdivision to create separate lots for each unit, thereby eliminating the requirement for compliance with the subdivision code for public streets and sidewalks, public infrastructure, etc.**

POSSIBLE OPTIONS

Option 1:

The City Council can choose to leave the current standards in place.

In looking at current projects that have been completed in the City, the Council might find that the current zoning and subdivision standards are sufficient to regulate the developments being constructed. The council might also find in looking at the two upcoming projects that the concerns for the Old Ames Middle school site can be addressed via the Master Plan or other subsequent applications for the project. This option would not however, address any concern for the current regulations in looking as properties where zoning is already in place and the proposed uses do not require subdivision or council review of the development Site Plans.

Option 2: (Subdivision)

As an alternative to the large lot allowance in the RL zones, the City Council can consider a zoning text amendment to eliminate the allowance to multiple single family and two family residential units on a single lot for all or certain Residential Districts. This approach recognizes a need for subdivision standards for single family and two family residential unit types to allow for subdivision review for compliance with public streets including sidewalks and infrastructure improvements.

Option 3: (Subdivision)

The City Council can consider revising the zoning code to incorporate certain elements of the subdivision standards into the zoning code which could create a tie to subdivision requirement without having to formally subdivide the property. This option could allow Council to address which standards of the subdivision code should be incorporated into residential developments that do not go through the formal subdivision process. This option would require that there be a set of criteria, such as density or lot size that might trigger when the subdivision requirements must be met for a development that does not choose to subdivide.

Option 4: (Occupancy)

The City Council can consider revising the definitions of single family attached dwelling and apartment dwelling to only allow a single family attached style dwelling unit to be occupied by a “family” by definition. This option would always limit the number of persons able to occupy a single family attached style unit to a “family” thereby; even if the unit was built on a large lot with multiple units (and defined as an apartment by definition) the occupancy of such unit type would always be consistent.

Option 5:

The City Council can consider other options or combinations of options to help clarify the intent of the code.

IMPACT ON PENDING DEVELOPMENT

Several of the options listed above would involve amendments to the current zoning ordinance. It is generally true that at any given time, there will be development applications of various sorts that are being processed through the steps prior to completion. Generally, when a new zoning provision becomes effective, the result is that all permits issued for uses or structures that the new amendment prohibits are rendered invalid. That point should be mentioned so that the Council is aware that applications that are “in the pipeline” may be impacted by the adoption of any new zoning provision, and some of those projects may even be rendered impermissible by a zoning code change

General Principles concerning vested rights

“Vested rights” is the concept that considers at what point a project will be permitted to proceed under the prior zoning provision so that, when completed, the project will be contrary to the new regulations. Whether a vested right exists is often an important issue in court adjudication of constitutional due process and takings claims.

The majority of states follow the rule that a landowner’s right to develop land vests only at that point in time when there has been substantial construction or action in reliance upon a lawfully issued permit. In those states, issuance of the permit is not alone enough to vest a developer with the right to proceed. Under Iowa law, court decisions have held that no property owner has the right in the continuation of a particular zoning classification, and decisions have examined whether the owner has made substantial expenditures toward the use in question prior to the zoning change and whether those expenditures were lawful. Issuance of a building permit is an important element of this analysis. Each situation will depend on its unique facts.

Local provisions concerning when rights vest

Since litigation and court determinations about whether a developer’s right to proceed was vested are time consuming, costly and not necessarily in the best interests of any party, many zoning enactments often contain specific provisions which set forth how pending applications will be treated when there are new zoning provisions enacted prior to project completion. The City of Ames has done this. The City’s zoning ordinance provides that applications for a building or zoning permit are to be granted or denied on the basis of the code in effect on the date of the application, but that permits based on an approved site plan shall be based on the ordinance in effect at the time of plan approval. (See § 29.105, Ames Municipal Code).

NEXT STEPS

If the City Council chooses to consider a specific change to some of the current zoning code standards, staff could be directed to draft the appropriate zoning text amendment(s), seek input from stakeholders, and hold a public hearing before the Planning and Zoning Commission. In that

case, staff would work to bring the text amendment back to Council for adoption on first reading in late August or early September.

If the City Council chooses to explore multiple options, staff could be directed to seek input on those options from stakeholders and the Planning and Zoning Commission. Staff would then bring that input back to Council in August, at which time Council could initiate the formal amendment process. This process would take an additional month or so to accomplish.

STAFF COMMENTS

Staff is looking to develop consistency in the residential zoning regulation interpretations and wishes to verify with Council if the current standards meet the design intent and character the Council is looking for in residential developments. It is not the intent of this report to stop current development or hinder future residential development, but to clarify and get the direction and vision of the Council as the city continues to develop in residential areas.

Attachment 1 Residential Use Chart

Zone	Use	Status	Approval Authority
RL, Low Density			
	Single Family	Y	Staff
	Two-Family	Y, if pre-existing	Staff
	Single Family Attached	N	--
	Apartments (12 Units or Less)	N	--
RM, Medium Density			
	Single Family	Y	Staff
	Two-Family	Y	Staff
	Single Family Attached	Y	SDP Minor
	Apartments (12 Units or Less)	Y	SDP Minor
	Dwelling House	Y	Staff
RH, High Density			
	Single Family	Y, if pre-existing	Staff
	Two-Family	Y	Staff
	Single Family Attached	Y	SDP Minor
	Apartments	Y	SDP Minor
	Dwelling House	Y	Staff
UCRM, Urban Core Medium Density			
	Single Family	Y	Staff
	Two-Family	Y, if pre-existing	Staff
	Single Family Attached (2 Units Only)	Y, if pre-existing	SDP Minor
	Apartments (12 Units or Less)	Y, if pre-existing	SDP Minor
FS-RL, Floating Suburban Low Density			
	Single Family	Y	Staff
	Two-Family	Y, if pre-existing	Staff
	Single Family Attached (12 Units or Less)	Y	SDP Minor
	Apartments (12 Units or Less)	N	--
FS-RM, Floating Suburban Medium Density			
	Single Family	Y	Staff
	Two-Family	Y	Staff
	Single Family Attached (12 Units or Less)	Y	SDP Minor
	Apartments (12 Units or Less)	Y	SDP Major

Y= Yes, permitted by required approval
N= No, prohibited

SDP Minor= Minor Site Development Plan
SDP Major= Major Site Development Plan