

COUNCIL ACTION FORM

SUBJECT: ZONING TEXT AMENDMENTS REVISING APPEALS OF ADMINISTRATIVE DECISIONS

BACKGROUND:

In June 2017, the City Council adopted new landscape standards for Section 29.403 of the Zoning Ordinance. In addition to the new landscape standards, other key sections of the Zoning Ordinance must be amended and updated to reflect the new standards and address any ancillary issues surrounding the implementation or enforcement of those new standards. The City Council elected to approve the new landscape standards with the direction that staff return to them within the next three months with amendments and updates to the administrative processes, appeals process criteria, and any miscellaneous remaining items that need to be addressed with adoption of the new standards.

Staff proposes amending the appeals process of appealing administrative determinations as a result of reviewing the new landscape ordinance provisions. (See Attachment A.) The current language is unclear on how to appeal Planning Director decisions, which are primarily Minor Site Development Plan reviews. Most administrative decisions are in reference to the Zoning Enforcement Officer, which is the Building Official who does not actually approve Site Development Plans but administers Building/Zoning Permits and enforcement actions. The proposed changes add a statement that decisions and Site Development Plans are appealable to the Zoning Board of Adjustment. This is intentional to require someone to pursue approval of a project before contesting how a standard is applied to project. There are no changes to the Minor Site Development Plan criteria or the other appeal options in relation to the Zoning Enforcement Officer.

Appeals of decisions regarding zoning related decisions by administrative officers are authorized by state statute. The City's ordinance follows the state law and identifies the Zoning Enforcement Officer as the authority for most zoning related determinations.

Administrative permits (e.g. Building/Zoning, Minor Site Development Plans) are rarely denied and lead to appeals. More commonly, appeals of orders for compliance, municipal infractions, or interpretations of standards are brought to the Zoning Board of Adjustment. For example, if staff determines a specific provision of the Zoning Ordinance applies to a project, a person may appeal that interpretation by the Zoning Enforcement Officer to the Zoning Board of Adjustment for their review and decision of the meaning of the standard. The proposed changes keep these current practices as part of the appeal process.

However, the new landscape standards include a number of provisions to promote flexibility through alternative means of compliance or to discretionally modify particular requirements in order to meet landscaping goals. A project can always move forward under the base landscape standards without discretionary compliance determinations on individual landscape provisions. An applicant can seek approval of a project consistent with the Minor Site Development Plan criteria by complying with the base standards and no discretionary determinations by the Planning Director. Current language in 29.1403(8)(a) does not use the term 'Planning Director' or reference minor site development plans when describing when an aggrieved party can appeal a decision. Staff believes that it is necessary to add this language to make clear this understanding from state statute and that it applies to decisions concerning Minor Site Development Plans.

Staff has also proposed changes to the appeal filing process to help clarify the method of appealing decisions. The changes modify the length of time for filing an appeal to 20 days from a written decision rather than 30 days and removes language about posting notice in a newspaper that is extraneous to the process.

Additionally, staff has removed extraneous language in the last two sentences of 29.1403(8)(b) addressing a stay of proceedings as the same language is used in 29.1403(8)(c).

At the June 21st Planning & Zoning Commission meeting, the Commission voted 6-0 to recommend approval to the City Council of the proposed new appeals and exceptions language.

ALTERNATIVES:

1. The City Council can approve new language governing appeals for minor site development plans.
2. The City Council can provide direction for alternative language and return prior to the first reading of an ordinance.

CITY MANAGER'S RECOMMENDED ACTION

After reviewing current appeals language found in Section 29.1403, staff believes further clarification should be made as to when an appeal can be made and how it is made with regard to Minor Site Development Plans in conjunction with corresponding new landscape regulations.

The proposed language preserves the current process for appealing errors in interpretations and application of standards by the Zoning Enforcement Officer, while specifying that the final decision by the Planning Director may also be appealed. The

new language does clarify that individual determinations as part of the landscape plan review are not appealable, only the final approval or denial of the plan.

Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1 as described above.

Attachment A

Excerpt of the Zoning Board of Adjustment Procedures and Exceptions from the Zoning Ordinance

Proposed changes are shown in ~~strikeout~~ and underline

Sec. 29.1403. ZONING BOARD OF ADJUSTMENT.

(8) Appeals to the Board.

(a) General.

Appeals to the Board may be taken by any person aggrieved by any decision of the Zoning Enforcement Officer or by any officer, department, board, or bureau of the City affected by any decision of the Zoning Enforcement Officer. Matters that may be appealed to the Board include decisions by the Planning Director on Minor Site Plan Development Plan approval.

~~(b) Filing. Appeals to the Board of Adjustment may be taken by any person aggrieved, or by any officer, department or board of the City affected by any decision of the Zoning Enforcement Officer. A written notice of appeal must be filed with secretary to the Board within 20 days of a written decision, order, or requirement by an administrative official. The written notice of appeal must specify the grounds thereof for the appeal.~~

~~Such appeal shall be taken within 30 days of the decision of the Zoning Enforcement Officer by filing with the secretary of the Board a written notice of appeal specifying the grounds thereof and the publication of notice of appeal in a paper of general circulation in the City of Ames as provided by the regulation of the board. The secretary of the Board shall give notice of such appeal within 10 days of the filing of the appeal to the Zoning Enforcement Officer and the Planning and Housing Director, who shall forthwith transmit to the Board all papers and documents constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the Building Official certifies to the Board after the notice of the appeal shall have been filed with the Building Official, that by reason of facts stated in the appeal a stay would, in the Building Official's opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed otherwise than by a restraining order which may be granted by a court of record on application of notice to the Building Official and due cause shown.~~

ORDINANCE NO.

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY ENACTING A NEW SECTION 29.1403 (8)(a) AND (b) THEREOF, FOR THE PURPOSE OF NEW LANGUAGE GOVERNING APPEALS ; REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; 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 enacting new 29.1403 (8)(a) and (b) as follows:

...

(8) Appeals to the Board.

(a) General. Appeals to the Board may be taken by any person aggrieved by any decision of the Zoning Enforcement Officer or by any officer, department, board, or bureau of the City affected by any decision of the Zoning Enforcement Officer. Matters that may be appealed to the Board include decisions by the Planning Director on Minor Site Plan Development Plan approval.

(b) Filing. A written notice of appeal must be filed with secretary to the Board within 20 days of a decision, order, or requirement by an administrative official. The written notice of appeal must specify the grounds thereof for the appeal. The secretary of the Board shall give notice of such appeal within 10 days of the filing of the appeal to the Zoning Enforcement Officer and the Planning and Housing Director, who shall forthwith transmit to the Board all papers and documents constituting the record upon which the action appealed from was taken.”

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

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

Passed this _____ day of _____, _____.

Diane R. Voss, City Clerk

Ann H. Campbell, Mayor