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MEMO

PKTS. 7/30/21

To: Mayor and City Council

From: Kelly Diekmann, Planning & Housing Director

Date: July 30, 2021

Subject: Request for a Text Amendment to Sec. 29.408 (7) – Requirements for Private Garages and Other Accessory Buildings.

Background:

Grant Thompson of 407 Pearson Avenue in Country Club Estates contacted Council Member Betcher (Attachment A) and other City Council members regarding his inability, by Code, to tear down and rebuild his existing nonconforming garage in the same location. The house and the garage were constructed in 1927, according to County Assessor records. Mr. Thompson has stated that the garage is deteriorating, and he would like to replace it in the same location. The garage is approximately 6 feet from the rear (west) property line and approximately several inches from the side (north) property line. In this case, the base zone setbacks would require 20 feet from the rear and 6 feet from the side. This is why the structure is nonconforming. Although there are exceptions for accessory buildings that allow reduced setbacks of as little as 3 feet, they do not apply in this situation. Relevant Zoning Ordinance standards are referenced on the following page.

The homeowner could rebuild a garage by placing it elsewhere, but this is viewed as undesirable as it would significantly reduce the usable area of the rear yard. (Attachment B-Location Map) **While having a garage is not a right guaranteed by the Zoning Ordinance, nor is it even required, it is generally recognized as desirable along with having usable yard space on a property.** This is why the homeowner requests consideration of a text amendment.

The following section of the Zoning Ordinance pertains to the setback regulations for accessory structures:

Sec. 29.408 – Other General Development Standards

(7) Requirements for Private Garages and Other Accessory Buildings.

- (a) The following requirements apply to private garages and accessory buildings in Agricultural, Residential and Hospital/Medical districts:
- (i) Location Within Setbacks.
- a. No detached garage or accessory building is allowed in the front yard, or within the side yard setback adjacent to public right-of-way in the case of corner lots.
- b. A detached garage or accessory building wholly or partially within the side yard shall meet all the same side setbacks as required for the principal building except in the case of a corner lot.**
- In the case of a corner lot a garage or accessory building may be placed within 3 feet of the side lot lines, provided the garage is set back a minimum of 25 feet from the abutting streets and provided the garage or accessory building is located in the side yard that does not abut the front yard where the principal building is addressed.
- c. A detached garage or accessory building wholly within the rear yard shall be a minimum of 3 feet from the abutting property line.**
- d. In cases in which the rear yard of a lot abuts the front yard of an adjoining lot, a detached garage or accessory building in the rear yard shall be not less than 6 feet from the adjoining property line for the distance of the required front yard setback on the adjoining lot.
- e. In no case shall a detached garage or an accessory building in the rear yard be placed closer than 15 feet to any lot line that abuts a street.

Staff has interpreted (b) and (c) to mean that an accessory structure, including a garage, can only be 3 feet from a property line (rear or side) if it is *directly* behind the house. Otherwise, the structure must adhere to the side and rear setbacks for the house (6-ft 1-story, 8-ft 2-story) and 20 feet respectively for RL, Residential Low Density).

The homeowner's garage is a nonconforming structure. Essentially 50% of the nonconforming structure must be kept as part of a remodel or rehabilitation to allow for it to remain as a nonconforming structure. The City has specific standards about whether such a structure be repaired or replaced if they meet the noted conditions below.

Sec. 29.307 – Nonconformities

(3) **Nonconforming Structures.** A nonconforming structure that lawfully occupies a site on the effective date of this Ordinance that does not conform with the Zone Development Standards of the underlying Zone or the General Development Standards of this Ordinance may be used and maintained, subject to the standards and limitations of this Section.

(a) Maintenance and Repair. Maintenance, remodeling and repair of a nonconforming structure shall be permitted without a variance or a Special Use Permit, provided that such maintenance, remodeling or repair does not increase the degree of nonconformity.

(i) Remodeling. An alteration to a nonconforming structure is classified as remodeling if, either the majority of the exterior walls or the roof is maintained through-out construction. In the event only an element of the structure (e.g. one wall) is non-conforming the remodeling of that feature must maintain 50% or more of its structural support and wall assembly to be considered remodeling and not rebuilding of the structure. Nothing within this definition is intended to restrict the adding or changing of window and door openings or changes to exterior siding and roof materials in relation to the percentage limitations.

(b) Occupancy by a Conforming Use. A nonconforming structure may be occupied by any use allowed in the Zone in which the structure is located, subject to all other applicable use approval procedures and conditions.

(c) Restoration of a Damaged Nonconforming Structure.

(i) Any nonconforming structure damaged to the extent of 70% or less of its assessed value by fire, wind, tornado, earthquake, or other natural disaster may be rebuilt, provided such rebuilding does not increase the intensity of use, as determined by the number of dwelling units (for residences) or floor area or ground coverage (for nonresidential uses), does not increase the nonconformity, complies with all other legal requirements, and is completed within 18 months from the time of damage. The structure shall not be rebuilt closer to the property line than the original structure or the applicable district setback lines, whichever is closer.

(ii) Any nonconforming structure damaged to the extent of more than 70% of its assessed value may not be rebuilt, repaired, or used unless the rebuilt structure conforms with all regulations of the district in which it is located or unless the Zoning Board of Adjustment approves the reconstruction by granting a Special Use Permit after determining that restoration will be made to the fullest extent possible in conformance with applicable zoning standards.

- (d) Enlargement and Expansion. A nonconforming structure may not be enlarged, expanded or extended unless the enlargement, expansion, or extension conforms to the requirements of this ordinance.
- (e) Relocation. The Zoning Board of Adjustment may authorize a structure containing a nonconforming use to be moved to another location on the same lot, provided that it determines that such a move will not have the effect of increasing the degree of nonconformity.
- (f) Detached Garage. If a property owner enlarges, expands or extends a principal building on a site in a residential zoning district in conformance with the applicable development standards, and if such expansion, extension or enlargement shall result in a conforming detached garage in the rear yard or a detached garage in the rear yard that is lawfully nonconforming as to setback becoming a detached garage in the side yard that does not meet the applicable side yard setback requirements, such enlargement, expansion, or extension may continue none the less without a variance from the Zoning Board of Adjustment under the following circumstance. The conforming or lawfully nonconforming detached garage in the rear yard shall have occupied the site prior to the effective date of this Ordinance.

Options:

Mr. Thompson is requesting to have the City initiate a Text Amendment for accessory structures, specifically detached garages. The situation of nonconforming garage is not a unique issue to his property. There are likely scores of properties in older parts of town where this situation may exist and any change would be applicable citywide.

Option 1: Modify Setback for all Accessory Structures (new and existing)

The intent is to rewrite or amend the rules for setbacks for accessory structures. There is a range of changes that could occur in this category for rear setbacks, side setbacks, or both. The simplest change, which would be partially beneficial to Mr. Thompson, is to adjust the rear yard exception to apply to the all of a rear yard regardless of whether it is partially in a side yard. This would allow for a rear three-foot setback for any structure located behind the home, but still require the six foot side yard setback that applies across the City. Council could also consider changes to side yard setbacks as well. These types of change might involve revising definitions, revising the setback exceptions, or both. Staff could look at what sort of impact this might have throughout the City.

Option 2: Create Reconstruction Standards for Nonconforming Accessory Structures.

The intent is to modify the rules to allow for existing, nonconforming structures to be rebuilt essentially as they exist today or in a similar manner that does not exacerbate a nonconformity. A rebuilt structure would still need to comply with current building

code requirements. The nonconforming location would thus be “grandfathered” in perpetuity. Staff could try to assess how many structures this would affect throughout the City. Staff would recommend tailoring such a change to accessory structures only or for a limited size. This option would meet Mr. Thompson’s interests, depending on the final language to allow for reconstruction.

Option 3: Amend Zoning Ordinance to Address both Option 1 and 2

The City Council would choose this options in order to provide reduced setbacks for all garages, regardless of whether they are nonconforming, and allow for an extra exception for reconstructing nonconforming garages. This option would likely meet Mr. Thompson’s interest. The intent is to look at rewriting the code with a combination of Option 1 and Option 2.

Option 4: Modify “Minor Area Modification” Exceptions to include Accessory Structures.

The City allows for the ZBA to approve small encroachments into required Setbacks for existing Principal Structures, of up to two feet into a side yard and rear yards by up to five feet. These exceptions do not apply to detached accessory structures. Adding language for accessory structures would be a minor change and grant partial relief nonconforming situations after a noticed hearing and approval by the ZBA,

Option 5: Decline the Request

The City Council can decline to direct staff to write a report for a Text Amendment pertaining to changes to accessory structures that could ease the ability of owners or properties with nonconforming accessory structures to rebuild them in the same location. This action would result in no changes to current rear and side yard setback requirements and gradually for structures to be removed and replaced over time as they reached the end of their useful lives.

Staff Comments:

As currently written, the regulations for accessory structures and nonconformities are designed to allow current nonconforming structures to remain until such time as replacement is required. At that time, compliance with setbacks is necessary.

Staff’s interpretation of code requires an accessory garage at 407 Pearson Avenue to be 20 feet from the rear property line and 6 feet from the side property line (which are the requirements for the primary structure) unless it is completely behind the house. If the structure is **wholly** behind the house, the setback can be 3 feet. Side yard setbacks would still be required to be 6 feet regardless of it being located in the rear yard.

Due to the wide range of Options identified by staff and implications, unless there is single precise amendment to be identified at this time, staff believes it would be best to refer the item to future agenda for Council. Alternatively, if City Council does not find these issues to be a priority at this time it would choose Option 5.

Attachment A – Letter to Council

Good evening Council Member (Dr.) Betcher,

My name is Grant Thompson. I live at 407 Pearson Ave and I believe that we met at the Ag Ave Block Party earlier this summer when we signed your petition to run again.

I am writing regarding the Ames municipal code as it relates to buildings and planning. We have a 1.5 car garage that is a non-conforming structure, meaning that it was grandfathered in when the current setbacks for buildings and accessory structures was passed. The garage is original to the house as far as we know (late 1920s) and is in disrepair with cracked floors, rotting sills, and is not standing straight and has been this way since we bought the home in 2018 when I was hired at ISU.

Today I was speaking with Benjamin Campbell, a Planner with the City and learned that essentially there is absolutely no way for it to be rebuilt without conforming to the modern side and rear yard setbacks. Given the size of our lot and the configuration of our house and yard, there is really no way to rebuild a new garage that meets the setbacks. I was told that when a non-conforming structure is lost for any reason - rebuild, derecho, fire, act of god, etc. the grandfathering of the structure is lost too. All new structures must conform.

Benjamin suggested that the only way to really address this was to discuss with my council representative and go from there.

On one of my many walks through the south campus neighborhood, I noticed that a large number of homes have garages that are non-conforming and could not be rebuilt in their current locations due to city code.

While garages are "nice-to-haves" and not "necessary" strictly speaking, they are desirable and have not only an affect on home price, but also desirability for future buyers. For some buyers, a no garage home may be a deal-breaker. In my case, if the garage is torn down, there's an immediate financial loss to the property and a desirability-loss when we'd eventually move.

My point is that the code seems to unfairly penalize many older homes - like many of those in the south campus neighborhood - that have been around longer than the current relevant city code.

We enjoy the numerous amenities in the south campus neighborhood - walkability, campus, campustown, Reiman Gardens, etc. and would like to remain here for the long-term if possible. My wife works at Workiva and I'm on campus, so it's a gem of a spot. Yet, the pending loss of a garage that will eventually deteriorate as all structures do, makes it a complicated choice.

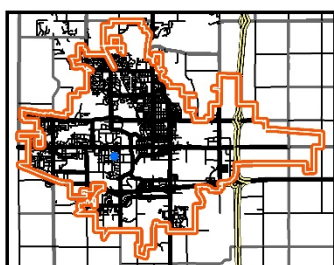
While not the intent of the municipal code, it seems to inhibit the upgrading of older homes in historic neighborhoods in favor of newer construction and suburban sprawl with larger, modern, and conforming structures. I don't know what it would take, but it seems that some interpretation, amendment, or such could be written and passed to at least allow rebuilds under certain circumstances.

I would be happy to visit with you about this and think that, if you are willing, visiting my home and a short walk in the neighborhood would help illustrate this point. I am starting with you as my ward rep, but would also be happy to include the at-large reps at this time if you think that would be advisable.

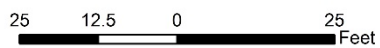
Thank you for your community service and for listening to this concern.

With best regards,
-Grant Thompson, PhD, PLA

Attachment B – Location Map



407 Pearson Avenue



Legend

 407 Pearson Avenue