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MEMO

Pkts. 7-30-21

TO: Ames City Council and Mayor

FROM: Kelly Diekmann, Planning and Housing Director

DATE: July 30, 2021

SUBJECT: Request by Zoning Board of Adjustment to Define “Temporary” in the Zoning Ordinance

BACKGROUND:

On June 15, 2021, the City Council referred to staff a request from the Zoning Board of Adjustment (ZBA) to define the term “temporary” in the City’s Zoning Ordinance. (See Attachment A – Letter from the ZBA Requesting a Definition of “Temporary” be added to the Zoning Ordinance.) Ms. Amelia Schoeneman, Chairperson of the ZBA, explained in her letter to the City Council that the ZBA has recently encountered what they believe is an omission in the Zoning Ordinance that needs to be addressed. **The application of the Zoning Ordinance definitions and standards in practice is that conformance is required in all situations, regardless of duration, unless specified otherwise in the Zoning Ordinance.** One example of “stated otherwise” includes a Special Use Permit for temporary asphalt batch plants. The ZBA believes it would be helpful if a definition of the term “temporary” were added to the definitions in the Zoning Ordinance.

The issue of “temporary” was identified during the review of a request for a Special Use Permit (SUP), received on January 14, 2021, to allow a yard waste collection and transfer facility at 220 and 400 Freel Drive. The SUP for this site was originally approved in April 2017 through May 1, 2018. Approval was extended by the ZBA in September 2017 through December 31, 2018. A new SUP was approved in February 2019 through December 31, 2020.

The SUP had been approved, extended, and approved again on a limited basis over the span of approximately three years. During that time, the applicant was not required to pave a parking area, and a driveway leading to the parking area since the Special Use Permits were thought to be of a limited duration and scope. The circumstances at the time were such that the applicant was in the middle of a contract with the City for yard waste disposal and needed a site on a short-term basis while the applicant sought a more permanent location in Story County.

Upon review of the new SUP application in 2021, the Planning Director determined that without a definition of “temporary” in the Zoning Ordinance there is no basis to consider three prior years of the use and proposed continued use of the site for three additional years as temporary. Therefore, the use needed to comply with all zoning standards, including paving of driveways and parking.

The applicant was presented with the alternatives of complying with the requirements for paving and landscaping improvements with the Special Use Permit, appealing the Planning Director’s decision to the ZBA, or pursuing a zoning text amendment with the City Council to address the specific issue of “temporary special uses.” The applicant chose to appeal the Planning Director’s decision rather than pursue a text amendment. The appeal was granted by the ZBA concerning requirements for site improvements and the SUP was approved for one year as a yard waste facility.

OPTIONS:

Option #1: Create a Defined Special Use Permit for Temporary Waste Processing

This option would be similar to how the City created in 2011 an option for temporary Asphalt Batch plants in certain zoning districts. The 2011 text amendment included adding Section 29.1311 (Temporary Concrete and Asphalt Batch Plants) to accommodate such a use on a temporary basis (six months, plus extension) and in a manner that would reduce the expected impacts on surrounding properties. Section 29.1311(3) specifies the instances in which a SUP shall not be granted. The ZBA has authority to specify what improvements are necessary to support the use.

This option would establish similar text amendments in Article XIII of the Zoning Ordinance to address sites to be used on a temporary basis for yard waste collection and disposal. A definition of “temporary” would not be written as the use would have a defined duration and parameters similar to Batch Plants.

Option #2: Create a Defined Special Use Permit for Temporary Uses in General

This option would establish a new Section in Article 13 for “Temporary Uses” including yard waste collection and disposal and other types of temporary uses. The Zone Use Tables for the applicable zones would also be amended to include “Temporary Uses” that would be permitted with the granting of a SUP by the ZBA.

Option #3: Define the Term Temporary and Applicable Exclusions to Development Standards as Suggested by ZBA.

This option is the suggestion of the ZBA, as described in their letter to the City Council, dated May 26, 2021. The Board suggests that “temporary” should be defined in Chapter 29 (Zoning) of the *Municipal Code* as “No more than one year from the date of approval, unless defined otherwise.” According to the ZBA, this would, by default, create a one-year duration for any SUP, with the option by the ZBA to assign a shorter or longer term as the circumstances require. The Board also states that it would also clearly put an applicant on notice as to the nature and duration of their SUP

and any future obligation that will be required upon extension of said SUP. The question of successive approvals would need to be addressed.

Option #4: Decline the ZBA Request

This option would retain the status quo. It would not define temporary or change the categorization of yard waste and collection facilities. The expectations would be for it to meet all applicable zoning standards.

STAFF COMMENTS:

The issue of the temporary use without expectations of meeting standards expected of similar uses that are of a longer duration could be problematic depending on the circumstances. There are potentially more uses that could be considered temporary than the Yard Waste Facility, but it is a good example of the issue of concern to the ZBA.

Connecting a temporary approval process to a Special Use Permit (SUP) process presents an opportunity for public notification and input. It is this input that will allow the ZBA to apply any conditions that it believes will ameliorate identified adverse impacts.

Should the City Council decide to initiate a zoning text amendment as requested by the ZBA, then the City Council must first give direction to the preferred approach. The City Council could also describe any parameters they would like to see within the preferred approach. Discussion of these options would require placing the item on a future agenda sometime later this fall. If Council does not find this issue to be a priority, then no action is needed on the request.

Letter from ZBA Requesting a Definition of "Temporary"

PKTS, 6-11-21

May 26, 2021

Mayor John Haila and City Council
PO Box 811
Ames, IA 50010
mayorcouncil@cityofames.org

Planning and Zoning Commission
PO Box 811
Ames, IA 50010

Re: Definition of Temporary in City Zoning Code

Dear Fellow Public Servants,

We, as members of the Zoning Board of Adjustment (the "ZBA"), have recently encountered an omission in the City Zoning Code of Ames (the "Code") that we believe needs to be addressed.


In a recent appeal of a Minor Site Development Plan as part of the request for a renewal of a Special Use Permit ("SUP"), we were tasked with determining whether the prior SUP that was issued to the applicant was temporary or permanent. The city planner had determined that the SUP was permanent despite the facts that the term is not defined by the Code and that no term had been placed on the original SUP. See enclosed minutes from our April 14, 2021, meeting for more details regarding the issue and discussion.

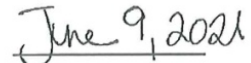
Based upon our discussion of the issue, we as a board feel it would be helpful if a definition of temporary were added to the Code. This would not only clarify the nature and duration of future SUPs for city staff and the ZBA, but more importantly, it would do so for future applicants. We believe it is important for applicants, who are subject to the restriction and requirements of the Code, to clearly know and understand their rights and obligations when applying for an SUP.

Therefore, we suggest that "temporary" in the Code should be defined as "no more than one year from the date of approval, unless defined otherwise." This would, by default, create a one-year duration for any SUP, with the option by the ZBA to assign a shorter or longer term as the circumstances require. It would also clearly put an applicant on notice as to the nature and duration of their SUP and any future obligation that will be required upon extension of said SUP.

Thank you for your attention to this matter,

Ames Zoning Board of Adjustment:

by 
Amelia Schoeneman, Chair


Date