

STAFF REPORT

**REQUEST BY ZONING BOARD OF ADJUSTMENT TO DEFINE “TEMPORARY”
IN ZONING ORDINANCE**

October 26, 2021

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.*)

City staff prepared a memo in response to the referral from the City Council. On July 30, 2021, the City Council reviewed the memo and directed that the issue of defining “temporary” in the Zoning Ordinance be brought back in the late fall as a staff report for further consideration.

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 regarding “temporary” uses, which may better be understood as limited duration uses as well. **In practice, the application of the Zoning Ordinance definitions and standards 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 Concrete and 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, which in turn is thought to offer relief from standards in some situations.**

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, and approval was extended through December 31, 2020.

During the three-year period in which the SUP was approved, extended, and approved again, 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 with the 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 the driveway and limited amount of parking area, as well as corresponding landscaping requirements.

The applicant was presented with the alternatives of: 1) complying with the requirements for paving and landscaping improvements with the Special Use Permit, 2) appealing the Planning Director’s decision to the ZBA, or 3) 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 or comply with the requirements for paving and landscaping improvements. 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. At that time the Board prepared the letter for City Council consideration.

OPTIONS:

Option #1: Create a Defined Special Use Permit (SUP) for “Temporary Waste Processing”

This option would be a similar approach to the zoning text amendment in 2011 for “*Temporary Concrete and Asphalt Batch Plants*” in certain zoning districts. The 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 13* 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 like the zoning text amendment for “*Temporary Concrete and Asphalt Batch Plants.*”

Option #2: Create a Defined Special Use Permit (SUP) for “General Temporary Uses” in non-residential zones

This option would establish a new Section in Chapter 29, Article 13 of the *Municipal Code* 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. Standards for the use would be as established by the ZBA approval of a Special Use Permit, much like Option 1.

This option is distinguished from Option 1 primarily by having no limitations on to potential range of uses proposed as temporary.

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 its 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.

This option is distinguishable from Option 2 in that as proposed it would apply to any use that is already listed as a Special Use in a base zoning district and it would not create a new classification of temporary uses.

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 expectation would be for an applicant to meet all applicable zoning standards.

STAFF COMMENTS:

The issue of the “temporary use” without expectations to meet standards similar to 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 that concerns the Zoning Board of Adjustment (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 mitigate identified adverse impacts.

While staff does not believe this is a significant issue, if Council wishes to proceed with a text amendment in response to the ZBA request, Option #1 would be the preferred to deal with the project that raised the issue. However, should the City Council want to satisfy the ZBA’s request for a more generic solution, direction should be given to the staff regarding your preferred option.

Attachment A – Page 1
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.

Attachment A – Page 2
Letter from ZBA Requesting a Definition of “Temporary”

Thank you for your attention to this matter,

Ames Zoning Board of Adjustment:

by 
Amelia Schoeneman, Chair


Date