

Staff Report

**REVIEW OF CITY ZONING APPROVAL AND EXCEPTION PROCESS**

November 14, 2023

**BACKGROUND:**

**City Council initiated a referral to staff on July 27 to identify processes and/or standards that allow for staff to address approval of development projects with flexibility for determining compliance with standards.** The genesis of the referral relates to the number of individual requests for zoning text amendments that often are an issue for one development rather than a broader policy issue.

Making these types of changes is time consuming and impacts standards that apply city-wide. **This report describes the permit approvals and zoning text amendment trends along with options discussing how flexibility in the application of standards may be appropriate.**

**Development approvals are generally categorized as legislative (policies and ordinances where the City has full discretion to decide the standards), quasi-judicial (project review and judgment of conformance to established criteria), or ministerial (administrative review/compliance determinations where there is minimal discretion to interpret the intent of the standards).** Iowa Code Chapter 414 specifically defines legislative and some quasi-judicial functions for City Council, and other specific quasi-judicial approvals such as variances for the Zoning Board of Adjustment (ZBA). State law leaves other quasi-judicial and ministerial approvals to be defined by the governing body.

Generally, zoning-related approval processes are based upon the need for public awareness and participation, application of and interpretation of standards, and the actual project approval criteria to ensure the general welfare of the community is maintained. **Flexibility can be included at the rezoning/legislative approval process with the PUD types of approvals, or flexibility can be permitted to some degree with the quasi-judicial process through design and site plan reviews.** Attachment A includes a table of the City's permit types and average annual number of approvals.

**DEVELOPMENT APPROVALS:**

Zoning standards cannot be arbitrary or capricious, meaning that they are typically uniform in their application and there are limitations on individual waivers of standards. **The most flexible zoning styles rely on systems of performance criteria and built-in exception standards through public hearing and review processes that subjectively judge the merit of a proposal. Alternatively, zoning styles can be very objective with little room for interpretation. This is done to make very predictable outcomes for projects and increased efficiency.**

The City's current zoning is intentionally rigid in its application with latitude granted for exceptions mostly limited only to traditional rezonings with Planned Unit Development (PUD) types of developments. This zoning style was adopted in 2000 to increase the predictability of project review with primarily staff approvals. **The City's zoning has a high level of predictability, but offers**

**limited variations or flexibility to standards, except for those issues expressly defined in the Zoning Ordinance.**

Although Ames relies heavily on staff approvals of projects, many communities require site plan review to be approved by the Planning and Zoning (P&Z) Commission, Design Review Board, and/or the City Council. Outside of a rezoning with a PUD process, site development and design review can offer some flexibility to a project that has a public review and may use design guidelines along with basic zoning standards to determine project compliance with criteria.

For example, commercial buildings and apartments are reviewed by the Ankeny P&Z Commission with an appeal option to Council. Ankeny also relies on PUDs for almost all residential development, which creates development-based standards agreed to for each project through the hearing process. The successful Prairie Trail development is a version of PUD with very specific single family architecture and design guidelines originally approved by their Council, but administered by staff. Staff administers Ankeny's permitting and minor modifications to the design review approvals by the Commission and Council.

In contrast to the public hearing process of design review mentioned above, there are some limited situations where cities use design review at the staff level and at higher level Board review to administer flexibility with exceptions. Des Moines and Cedar Rapids are two examples discussed in greater detail later in this report and Attachment C.

Although the City of Ames has primarily objective requirements, the City applies flexibility in the following manner. City Council has authority to approve zoning text amendments, subdivision waivers, major site development/master plans for landscaping design and layout, and PUD zoning for residential development. The Zoning Board of Adjustment considers variances, which have a high bar for approval under state law, and specific limited number of minor area modifications as exceptions to setback and site improvements. **Staff's discretion is mostly limited to unique conditions related to landscape features, improvements to nonconforming sites, and other limited changes affecting already developed sites.**

Within the past five years, small elements of flexibility have been added to the Zoning Ordinance for PUDs, minor amendments by staff, landscaping alternatives, equipment screening exceptions, and parking lot configurations.

### **ZONING TEXT AMENDMENTS:**

When a developer identifies an issue or concern with how a zoning standard impacts their project, the only alternative is to approach City Council requesting a change of the Zoning Ordinance. **Based upon anecdotal comparison to other communities, staff's impression is that the City of Ames seems to have a high number of zoning ordinance changes driven by individual requests.**

Staff categorized by topic the zoning text amendments approved by City Council since 2015 (Attachment B). Since 2015, developers requested 51 zoning text amendments, with City Council ultimately approving 42 text amendments. An additional 27 text amendments were presented and approved by the Council at the request of staff. City Council elected to not move forward with only 9 of the developer related requests during this time period.

**Of the 42 developer requests approved by City Council, the most common changes related to setbacks, parking, and the CSC/DSC zoning district development standards (19 text**

**amendments).** From staff's assessment, the amended standard had a larger range of variation for the numeric or quantitative standards, e.g., anywhere from 1% to 30+% . **The next most common developer issue was related to allowable uses (8 text amendments). Based upon the review of the numeric standards, a significant amount of flexibility to staff or a board would be needed to have minimized the number of text amendment requests.** However, no use-based requests could likely be delegated to staff for an ad hoc decision with flexibility for interpretation by staff. Use-based changes would best be suited to intentional zoning district updates to address use concerns for a broad area instead of one developer.

### **OTHER CITIES:**

As discussed above, many cities rely on public hearing approval processes for larger project approvals. Cities often have "exceptions" defined for review by the Zoning Board of Adjustment as well, the same as Ames. Staff discretion is also limited similar to Ames with a notable exception of Des Moines and to a lesser degree Cedar Rapids and Iowa City. Upon discussion with Iowa City staff, the exceptions are narrow in scope and not broadly applicable. Therefore, staff evaluated the processes in Des Moines and Cedar Rapids in greater detail (Attachment C).

Des Moines has the most far-ranging options of exception with essentially an allowance for staff to approve "Level 1" (commonly up to 30% changes) exceptions from any numeric requirement. There is a greater allowance for a "Level 2" exception, which requires Planning Commission approval. Notably, Des Moines applies more of a "form based" design approach to its zoning that requires specific architectural features and building forms in addition to the typical quantitative standards for setbacks, landscape percentage, parking, window percentage etc. Des Moines also has single family home design review for the entire City. To facilitate this process, Des Moines separately administers its zoning and site development chapters. The zoning standards relate to uses and review authority for variances with the Zoning Board of Adjustment while the site development chapter has review of exceptions through Planning Commission and City Council.

As City staff understands the Des Moines process, by practice the administrative exceptions are granted routinely and little judgement of the need or benefit of the exception as they apply to common single-family home development reviews. However, the approach is different for new development sites where exceptions are evaluated for merit and overall trade-offs for other enhancements in building or site design to meet the design intent goals of the standards.

Cedar Rapids has some similar options for certain types of standards for staff to grant exceptions. It appears this process also applies primarily within more form-based zoning districts and in commercial areas. The Cedar Rapids criteria for approval appear to require staff to evaluate the need and benefit, making granting the exceptions less automatic compared to Des Moines.

### **OPTIONS:**

Staff understands the minor issues, such as the Ames Ford vehicle charger exception, can hamper some projects and are of little consequence to the City overall. Having an option for some discretionary relief of minor issues, especially for existing sites, could be valuable.

**Currently, minimal discretion is afforded to staff to make allowances based upon design review or unusual circumstances. Examples of staff discretion include application materials, specified landscaping variations, mechanical equipment screening, minor amendments to City Council approved Major Site Development Plans, and the village architect role for Somerset.**

Due the defined process of Iowa Code Chapter 414, many cities operate in a manner consistent with that of Ames for the division of responsibilities between staff, ZBA, and City Council. However, the details can vary, with many cities requiring more City Council approval of site plans for multi-family and commercial development than Ames requires. Some cities have specific design review boards or roles for the P&Z to limit the need for City Council reviews once a site has zoning. Ankeny is an example of this approach.

**The number of Zoning Text Amendments processed in Ames is abnormal from staff's experience in other communities. Staff believes the high number of text amendments is indicative of one of three things: 1) a Code is out of date and does not address current needs (not preferences), 2) there is lack of support for standards (preferences), or 3) the standards are too specific to be workable. Staff's review of the Zoning Text Amendments adopted in Ames typically align with preferences for developments to meet standards that are less stringent than the adopted ones, as opposed to unworkable or need-based issues.** Based on the categorization of text amendments in Attachment B, it is difficult to determine what type of administrative exception process would have resulted in significantly fewer requests in the past.

**However, adding a limited percentage exception option or some qualitative review flexibility at staff level could address comments regarding the rigidity of zoning standard and facilitate a smoother customer experience. Below are four broad options to help City Council think about different approaches that could create more flexibility than currently exists or updates zoning standards:**

**Option 1: Allow for staff approval of a 20% reduction/increase in a numeric standard of base zone based upon impractical conditions or alternative design features.**

*Examples would include parking, setbacks, planting quantities, Floor Area Ratio, Landscape Coverage, setbacks, or height. It could not be used to defeat a minimum dimensional standard, such as screening height, that would render a result that does not meet the intent. Additionally, this language would not allow for a 20% reduction to all limitations on a site carte blanche; it would only apply to variations that are necessary to address site conditions applicable to facilitating the project. Appeals of staff decisions would be only by the property owner and would be addressed by the ZBA as part of the City's current ordinance language.*

**Option 2: Allow Planning and Zoning Commission approval of all Major Site Development Plans, plus a 30% reduction to a minimum/maximum requirements and substitution of materials or design guidelines alternatives.**

*This option allows the P&Z Commission to approve a wide range of variations to standards and requirements through a noticed hearing process. It would also include more subjective design element relief. The greater latitude is based upon the public notice requirement. Appeal of the decision by either the developer or the public would be to the City Council.*

**Option 3: Update Zoning District standards for commercial zoning districts to address intended design features, materials, site layout, and uses with options for variations to address alternative compliance, pedestrian-oriented features and design, and impractical conditions.**

*This strategy would be more comprehensive than the first two by updating the City's standards to align with Plan 2040 objectives and implementation. As part of the updates, the Council could describe its desired level of flexibility for staff, while language clarifying the intent could be added to the standards for site plan review, similar to either option 1 or option 2.*

**Option 4: Update General Zoning and Development Standards for all zoning districts for common development issues identified by Council.**

*This strategy would attempt to address the most common complaints about City standards that staff receives during DRC. Through the Development Review Committee (DRC) process, planning staff believes the most common zoning standards discussed by applicants for flexibility are landscaping trees, building materials/design features (if required by base zoning district), industrial parking rates, equipment screening, walkway connections, and sidewalk construction. For single-family subdivisions, the Floating Suburban (FS) standards for 10% usable open space, along with the 600-foot block length standard, are the most common design issues.*

**STAFF COMMENTS:**

**As noted above, it is difficult to identify specific issues where administrative relief or exceptions would substantially minimize Council involvement in minor development issues. Having some additional types of flexibility is likely beneficial to resolve minor issues for existing sites where additions or modifications are proposed. However, the Council should be aware that policy questions regarding the intent or meaning of certain standards in the City's ordinance will always be at issue.**

Clear expectations for exceptions and their criteria are necessary to support any flexibility afforded to staff. During development review, staff is pressed into positions to generally reduce expectations that are categorized as being “flexible,” compared to a give-and-take process or focusing on a qualitative basis of a performance-based outcome. This is partially due to the objective nature of our current code language. Staff believes a balance of assessing the needs and benefits of flexibility for a project can be achieved at the staff level in many instances, unfortunately, this puts the onus on a single staff member for these case-by-case decision rather than a reliable standard or public design review process to judge compliance.

**Staff believes a comprehensive adjustment of standards to contemporary methods and design interests that include some new flexibility at the staff level has the most merit of the options described above (Option 3). However, this is the most time-consuming commitment depending on outreach efforts. If Option 3 is selected, the task would be broken down into first updating or editing the standards, City Council review and acceptance, and finally consideration of any property rezonings for an actual change of zoning. Options 1 and 2 allow for different types of relief and can be implemented regardless of significant updates to zoning standards as described in Option 3 or Option 4.**