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ORDINANCE AMENDMENT REVIEW SHEET

AMENDMENT: C2O-2011-011

DESCRIPTION: Changes in flag lot requirements for residential subdivision applications.

BACKGROUND:

Amendments are proposed for Chapter 25 pertaining to the requirements for the use of flag lots within a residential subdivision. In August of 2009, the Zoning and Platting Commission, after a series of contentious resubdivision cases involving residential flag lot subdivisions, voted to form a committee to look at the potential problems associated with flag lots.

The subcommittee first met on September 9, 2009 and consisted of members of the Zoning and Platting Commission and interested parties from both the neighborhood and the development community. Each sub-committee meeting was attended by city staff and focused on a specific review area. There were four subcommittee meetings and at each meeting a specific review areas was discussed including fire safety, water/wastewater service issues, transportation issues and legal issues. At the conclusion of the sub-committee meetings, the sub-committee sent a request to the full Zoning and Platting Commission to consider a number of amendments. The Zoning and Platting Commission voted to forward their proposed amendments to the Codes and Ordinance sub-committee of the Planning Commission.

The following amendments have been approved by the Codes and Ordinances Subcommittee of the Planning Commission:

Proposed modification to LDC definition of flag lot:

25-1-21 DEFINITIONS

(38) FLAG LOT means a lot that abuts a street by means of a strip of land that does not comply with the requirements of this chapter for minimum lot width, is not less than 20 feet wide, and may be used for access

Proposed new section for LDC

§ 25-4-175 FLAG LOTS

(A) All residential subdivisions utilizing a flag-lot design must submit a driveway plan and a utility plan for review and approval with the final plat application.

(B) All addresses for residential lots utilizing the flag lot design must be displayed at the street for emergency responders.

(C) A residential subdivision utilizing flag lot designs may not be approved if it is in violation of private deed restrictions against resubdivisions.

(D) Residential flag lot designs which include three or more units must be constructed with a fire lane for access for emergency responders.

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(E) If the residential structure associated with a flag lot is over 150 feet from the street, that structure must be sprinkled for fire protection.

CURRENT REGULATIONS:

Currently the Land Development Code only defines a flag lot as a lot that abuts a street by means of a strip of land that does not comply with the requirements of the code for lot width, is not less than 15 feet wide, and is used for access.

ISSUES:

There are both proponents and opponents to these proposed amendments within the community. Neighborhood groups are generally supportive of the proposed amendments because they would provide more protection for existing residents, but the development community has expressed concerns that the amendments would complicate the approval process for flag lots and make it more difficult to provide infill housing in established neighborhoods. In addition, staff does not support all of the proposed amendments (see Basis for Recommendation).

DEPARTMENTAL COMMENTS:

In addition to meeting with the Zoning and Platting Flag Lot Subcommittee, and the Codes and Ordinance Subcommittee of the Planning Commission, the Planning and Development Review staff has received input from other city departments. The staff recommendation reflects input from the Fire Department, Residential and Commercial Plan Review, and the Law Department. In addition, staff has consulted with City of Austin/Travis County Single-Office staff to determine if they were interested in pursuing these amendments to Title 30, the development code for the Single-Office. After discussion, the Single-Office determined that the only amendment they wished to pursue was the change in the definition of flag lot and to increase the minimum width of required lot frontage from 15 to 20 feet. These agreed upon amendments will be considered with a larger package of proposed Title 30 amendments in the future.

STAFF RECOMMENDATION:

Staff supports the proposed amendment to the LDC definition of a flag lot. Staff also supports (A) and (B) of the proposed new section of the LDC 25-4-175 Flag Lots. Staff does not recommend (C), (D) and (E) of the proposed new section of the LDC 25-4-175 Flag Lots.

BASIS FOR RECOMMENDATION:

1. Staff supports the modification to the definition of flag lot and the increase in the minimum lot width. An increase in the minimum lot width for a flag lot from 15 to 20 feet does not represent a radical departure from the current regulation and will make serving flag lots with utilities easier and provide additional area when the flag pole is used for access. Also, the current definition says that a flag lot strip is used for access. Many times this is not the case as a flag pole may be used to satisfy the lot frontage requirement but the lot may be served by a joint use access easement from another location.

Proposed new section of LDC for Flag Lots (25-4-175):

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(A) All residential subdivisions utilizing a flag-lot design must submit a driveway plan and a utility plan for review and approval with the final plat application

Staff supports this amendment because often it is difficult to design and fit utilities on a site for flag lots as well as comply with off-site parking requirements. Problems associated with utilities are not often discovered until the building permit process after the subdivision has already been approved. This amendment would require the developer to show in detail how utilities and driveways can be accommodated prior to having their flag lot subdivision approved.

(B) All addresses for residential lots utilizing the flag lot design must be displayed at the street for emergency responders.

Staff supports this amendment. Residential flag lots often result in residential structures being built behind the primary structure that are not visible from the street. This requirement can only help emergency responders locate a structure if there was any doubt about the location of the emergency call.

(C) A residential subdivision utilizing flag lot designs may not be approved if it is in violation of private deed restrictions against resubdivisions.

Staff does not support this amendment. Private deed restrictions are contracts between individual, non-governmental, persons or groups. The enforcement of private deed restrictions has never been included as part of a review by city staff on a development application. The City of Austin should not develop a policy whereby staff is enforcing rules and regulations that were not approved by the City Council. Staff believes that any enforcement of private deed restrictions by the City would set a bad precedent and would put staff in a position of having to determine what other private deed restrictions may be enforceable by the City. Staff does not want to be in a position of having to make decisions on the applicability, enforceability, or legality of private deed restrictions to which the City was not a party and which may not be consistent with City regulations or policies.

(D) Residential flag lot designs which include three or more units must be constructed with a fire lane for access for emergency responders.

Staff does not support this amendment. In conversations with Fire Department reviewers we have learned that a fire engine will not normally leave the public right-of-way onto a private residential driveway due to the weight of the fire engine and the possibility of damaging the property or the fire department's equipment. In addition, the cost of constructing a residential fire lane to Fire Department specifications would be cost prohibitive for so few residential units.

(E) If the residential structure associated with a flag lot is over 150 feet from the street, that structure must be sprinkled for fire protection.

Staff does not support this amendment because there is a state law prohibiting this requirement. S.B. No. 1410, signed into law in June of 2009 states;

SECTION 12. Section 1301.551, Occupations Code, is amended by adding Subsections (e) and (f) to read as follows:

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(e) Notwithstanding any other provision of state law, after January 1, 2009, a municipality may not enact an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire sprinkler protection system in a new or existing one- or two-family dwelling. A municipality may adopt an ordinance, by-law, order, or rule allowing a multipurpose residential fire protection sprinkler specialist or other contractor to offer, for a fee, the installation of a fire sprinkler protection system in a new one- or two-family dwelling.

PLANNING COMMISSION ACTION:

CITY COUNCIL ACTION:

ORDINANCE READINGS: 1st 2nd 3rd

ORDINANCE NUMBER:

ASSIGNED STAFF: Don Perryman, Senior Planner, 974-2786
e-mail: don.perryman@austintx.gov

Perryman, Don

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From: Brooke Bulow [redacted]@hbaaustin.com]
Sent: Wednesday, September 21, 2011 2:27 PM
To: Perryman, Don
Subject: Comment to proposed flag lot amendments

Hi Don,

Will you please share the following concerns about the proposed amendments to flag lots with the Planning Commission since the HBA will not be able to attend the hearing? We have some other commitments that evening and we are stretched pretty thin (like everyone).

The City of Austin is on record saying it prefers infill development to sprawl. Flag lots help the city reach that goal. We have several concerns that some of the amendments (from cost and process perspectives) will make it more difficult to provide infill housing in established neighborhoods.

Thanks,

Brooke

(HBA comments in blue font)

25-1-21 DEFINITIONS (proposed)

(38) FLAG LOT means a lot that abuts a street by means of a strip of land that does not comply with the requirements of this chapter for minimum lot width, is not less than 20 feet wide, and may be used for access. HBA comment: The problem being addressed by this proposed change is not clear; 15 feet should be plenty for fire and emergency access. The proponents for this change should articulate the problem and how increasing the minimum width of a flag lot addresses the problem, particularly if access to the lot will be elsewhere. The HBA will support reasonable changes to the Land Development Code that are tailored to address specific problems and are the least burdensome solution. The HBA asks that an affordability impact statement be produced per city code since it is likely the proposed increase in the minimum lot width will raise housing costs.

Proposed new section of LDC for Flag Lots (25-4-175):

(A) All residential subdivisions utilizing a flag-lot design must submit a driveway plan and a utility plan for review and approval with the final plat application

Staff supports this amendment because often it is difficult to design and fit utilities on a site for flag lots as well as comply with off-site parking requirements. Problems associated with utilities are not often discovered until the building permit process after the subdivision has already been approved. This amendment would require the developer to show in detail how utilities and driveways can be accommodated prior to having their flag lot subdivision approved.

HBA comment: What if driveway and utility locations are not defined at the time of plat application? The driveways are located when the house plan is submitted and the utility locations are determined when the infrastructure development plans are developed. Both of those items are done after the plat application. We would also suggest that if the city insists on the wider minimum to 20 feet that the problems cited would be addressed and this section not required. Due to the additional cost of submitting a driveway plan and a utility plan, the HBA asks that an affordability impact statement be produced per city code.

(B) All addresses for residential lots utilizing the flag lot design must be displayed at the street for emergency responders.

HBA comment: We agree with the staff recommendation due to public safety concerns.

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Staff supports this amendment. Residential flag lots often result in residential structures being built behind the primary structure that are not visible from the street. This requirement can only help emergency responders locate a structure if there was any doubt about the location of the emergency call.

(C) A residential subdivision utilizing flag lot designs may not be approved if it is in violation of private deed restrictions against resubdivisions.

HBA comment: We agree with the staff recommendation.

Staff does not support this amendment. Private deed restrictions are contracts between individual, non-governmental, persons or groups. The enforcement of private deed restrictions has never been included as part of a review by city staff on a development application. The City of Austin should not develop a policy whereby staff is enforcing rules and regulations that were not approved by the City Council. Staff believes that any enforcement of private deed restrictions by the City would set a bad precedent and would put staff in a position of having to determine what other private deed restrictions may be enforceable by the City. Staff does not want to be in a position of having to make decisions on the applicability, enforceability, or legality of private deed restrictions to which the City was not a party and which may not be consistent with City regulations or policies.

(D) Residential flag lot designs which include three or more units must be constructed with a fire lane for access for emergency responders.

HBA comment: We agree with the staff recommendation.

Staff does not support this amendment. In conversations with Fire Department reviewers we have learned that a fire engine will not normally leave the public right-of-way onto a private residential driveway due to the weight of the fire engine and the possibility of damaging the property or the fire department's equipment. In addition, the cost of constructing a residential fire lane to Fire Department specifications would be cost prohibitive for so few residential units.

(E) If the residential structure associated with a flag lot is over 150 feet from the street, that structure must be sprinkled for fire protection.

HBA comment: We agree with the staff recommendation. The city must follow state law.

Staff does not support this amendment because there is a state law prohibiting this requirement. S.B. No. 1410, signed into law in June of 2009 states;

SECTION 12. Section 1301.551, Occupations Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Notwithstanding any other provision of state law, after January 1, 2009, a municipality may not enact an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire sprinkler protection system in a new or existing one- or two-family dwelling. A municipality may adopt an ordinance, by-law, order, or rule allowing a multipurpose residential fire protection sprinkler specialist or other contractor to offer, for a fee, the installation of a fire sprinkler protection system in a new one- or two-family dwelling.

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About the Home Builders Association (HBA) of Greater Austin

For 57 years, HBA has served as the leading not-for-profit trade organization dedicated to residential construction and remodeling in Central Texas. With approximately 8500 members, the HBA works with government, public, business and community organizations in five counties to protect every family's right to home ownership. The HBA and its members work to ensure that those who protect us, teach our children, and provide essential services can afford to live here. The majority of new homes are purchased by middle-class families – the very

people at risk of being priced out of our communities by rising taxes, government fees and regulations.

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