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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 for forward their proposed amendments to the Codes and Ordinance sub-committee of the Planning Commission, which endorsed the changes and recommended the amendments to the full Planning Commission.

PLANNING COMMISSION ACTION: On September 27, 2011, the Planning Commission voted to recommend the draft ordinance which is attached as Exhibit A.

STAFF RECOMMENDATION: Staff disagreed with some of the provisions of the Commission's recommendation and recommended that the ordinance be adopted without the following provisions:

25-4-175(C), which stated that flag lots may not be approved if in violation of private deed restrictions against resubdivisions.

25-4-175(D), which required that flag lots with three or more units must be constructed with a fire lane.

Both versions of the ordinance were presented to City Council on February 2, 2012.

CITY COUNCIL DIRECTION: On February 2, 2012, the City Council postponed action on this amendment until April 26, 2012, and provided the following direction to staff:

(1) Carry forward the recommendations of the Planning Commission in an ordinance that excludes the language about deed restrictions.

(2) Conduct a survey of established subdivisions in Austin where deed restrictions might inhibit the use of flag lots.

(3) Craft language to consider:

a. Allowing flag lots in new subdivisions where adjustments can easily be made to accommodate safety and infrastructure concerns;

b. Criteria that would allow for additional flexibility of the use of flag lots through an enhanced variance process. The criteria could include items like accessibility for emergency services, neighborhood compatibility, environmental and tree protection, and infrastructure;

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c. Submittal of deed restrictions along with applications for resubdivision for informational purposes only.

(4) Vet the new language and ask for a new recommendation by the Planning Commission before bringing the item back to Council.

STAFF RESPONSE:

In response to this direction from Council, staff researched all recorded subdivisions between the years of 1968 to 1972. Of more than 300 subdivisions examined, only five recorded plats were found that referenced private deed restrictions. Of these five, only one listed a specific prohibition against resubdivision of lots. It is possible that there are other subdivisions with similar deed restrictions that are not listed on the plat. However, staff research suggests that the number of subdivisions where deed restrictions might inhibit the use of flag lots is relatively small.

To address the additional direction provided by Council, staff has prepared a revised draft with the following new provisions, attached as Exhibit B:

(A) In new single-family or duplex residential subdivisions, flag lot designs may be used where no more than two dwelling units utilize a shared driveway. Residential flag lot designs with more than two units sharing a driveway may be utilized if they conform to the fire code, utility design criteria, plumbing code and requirements for access.

This provision allows for flag lots in new subdivisions and addresses concerns regarding the “stacking” of lots and the ability for lots to receive timely emergency services. This provision allows for the continued but limited use of flag lots in new subdivisions where existing neighborhood lot patterns have not been established.

(B) For property zoned for uses other than single-family residential or duplex residential, flag lot designs are permitted if the Director determines that the subdivision conforms to the fire code, utility design criteria, plumbing code and requirements for access.

Staff has added this section to ensure that flag lots may still be utilized by multi-family, commercial and industrial developments where site plan review is required and includes review by emergency service and utility providers.

(C) The Commission may grant a variance to allow flag lots designs for resubdivisions of existing subdivided residential lots if the Commission finds that the resubdivision has provided accessibility for emergency responders, has adequate room for required utilities, enhances environmental and tree protection, and is otherwise compatible with the surrounding neighborhood. In addition, the applicant shall submit a copy of any existing private deed restrictions for informational purposes.

For flag lot resubdivisions in existing single-family developments, this provision entitles the Commission to grant a variance when access, emergency response and utility concerns have been addressed by the applicant. This provision gives the Commission more discretion in approving flag lot subdivisions in existing developed neighborhoods.

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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.

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, the Law Department, Neighborhood Housing and Community Development, and Austin Water Utility, as well as Travis County. Input from all these departments has been incorporated into the draft ordinance.

STAFF RECOMMENDATION:

Staff supports an alternative recommendation attached as Exhibit C. This alternative allows flag lots without a variance but addresses many of the concerns raised during the extensive discussions on this issue.

BASIS FOR RECOMMENDATION:

1. Staff supports the modification to the definition of flag lot. The minimum width of the lot is proposed to be deleted from the definition and dealt with in a new section of the code. 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.
2. An increase in the minimum lot width from 15 to 20 feet will make it easier to serve flag lots with utilities and provide additional area when the flag pole is used for access. However, this recommendation also allows the width to remain at 15 feet if two flag lots share a common driveway and there is sufficient area to accommodate utilities.
3. Staff supports the requirement to provide a driveway plan and a utility plan for review and approval with the final plat. Often it is difficult to design and fit utilities on a site for flag lots as well as complying 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.
4. Staff supports the requirement to display addresses for residential lots at the street. Residential flag lots often result in residential structures being built behind the primary structure facing the street and are often 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.
5. Staff does not support the original Planning Commission proposal to prohibit flag lots if they conflict with private deed restrictions against resubdivision. Private deed restrictions are contracts between individual, non-governmental, persons or groups. The enforcement of

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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 would set a bad precedent and would put staff in a position 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 whereas staff may not have the legal expertise to make this determination.

6. Staff does not recommend creating a variance process for resubdivisions with flag lots. This would add an additional level of complexity to the review process and potentially have an adverse effect on affordability of infill housing.

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

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Exhibit A: Planning Commission Recommendation

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

Deleted: 15

Deleted: 15

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 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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Exhibit B: Council Directive to Staff

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.

Deleted: , is not less than 15 feet wide, and is used for access

Proposed new section for LDC

§ 25-4-175 FLAG LOTS

(A) In new single-family or duplex residential subdivisions, flag lot designs may be used where no more than two dwelling units utilize a shared driveway. Residential flag lot designs with more than two units sharing a driveway may be utilized if they conform to the fire code, utility design criteria, plumbing code and requirements for access.

(B) For property zoned for uses other than single-family residential or duplex residential, flag lot designs are permitted if the Director determines that the subdivision conforms to the fire code, utility design criteria, plumbing code and requirements for access.

(C) The Commission may grant a variance to allow flag lots designs for resubdivisions of existing subdivided residential lots if the Commission finds that the resubdivision has provided accessibility for emergency responders, has adequate room for required utilities, enhances environmental and tree protection, and is otherwise compatible with the surrounding neighborhood. In addition, the applicant shall submit a copy of any existing private deed restrictions for informational purposes.

(D) The minimum width of a flag lot is 20 feet unless two or more contiguous lots share a common driveway and sufficient area is available outside the drive on each lot for utility installation, or the applicant can demonstrate access through an alternative route, in which case the minimum lot width is 15 feet.

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(E) 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.

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

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Exhibit C: Staff Recommendation

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.

Deleted: , is not less than 15 feet wide, and is used for access

Proposed new section for LDC

§ 25-4-175 FLAG LOTS

(A) Flag lot designs are permitted if the Director determines that the subdivision conforms to the fire code, utility design criteria, plumbing code and requirements for access.

(B) The minimum width of a flag lot is 20 feet unless two or more contiguous lots share a common driveway and sufficient area is available outside the drive on each lot for utility installation, or the applicant can demonstrate access through an alternative route, in which case the minimum lot width is 15 feet.

(C) 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.

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

Perryman, Don

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From: Megan Meisenbach [mailto:mmeisenbach@austin.tx.com]
Sent: Wednesday, April 04, 2012 12:34 PM
To: Perryman, Don
Cc: AMC Co; Joe Reynolds
Subject: Additions to Amendments to Flag Lot Code

Attachments: Additions to Flag Lot Code Amendments.pdf; ATT5992367.txt



Additions to Flag Lot Code Ame... ATT5992367.txt
(159 B)

Dear Mr. Perryman,

Thank you for your call to me today. I am sorry I missed your call.
We suggest the follow Additions to the Flag Lot Code Amendments, in order for the City
Code to to follow the State Law (212.014 and 212.015).

1) Applies only to applications for flag lots in residential subdivisions.

2) Flag lot applications must include:

a. A copy of the Deed Restrictions applying to the property (also known as Covenants), sealed and certified by the Travis county clerk

b. A Texas State Bar licensed attorney's signed Letter of Review of Deed Restrictions stating that the proposed flag lot:

i. Will not violate, alter, amend or terminate deed restrictions

concerning lot width

ii. Will not violate, alter, amend or terminate deed restrictions

concerning lot length

iii. Will not violate, alter, amend or terminate deed restrictions

concerning lot size

iv. Will not violate, alter, amend or terminate deed restrictions

concerning additional lots

v. Will not violate, alter, amend or terminate deed restrictions

concerning re-subdivision

- c) A copy of modifications made to original deed restrictions sealed and certified by the Travis county clerk
- 3) Re-subdivisions as flag lots must have approval of the Letter of Review of Deed Restrictions by the Planning Commission or Zoning and Platting Commission before filing with the Travis County Clerk.
- 4) All flag lot re-subdivisions applications are variances.
- 5) Notice of a flag lot re-subdivision and right of petition must be mailed to all current owners of the subdivision's lots within 200 feet prior to review by the Planning Commission or Zoning and Platting Commission, upon receipt of a request for a flag lot.
- 6) If owners representing 20% of the land within that area described in 5) above oppose the flag lot, then any approval requires a super majority of 66.66% of the City Council or appropriate commission assigned the task of land granting a flag lot.

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Submitted by Megan Meisenbach
[REDACTED]

Reviewed and approved by Allan Mc Murtry
[REDACTED]