
SALT LAKE CITY COUNCIL STAFF REPORT

DATE: September 5, 2003

SUBJECT: Petition No. 400-02-23 – Request to amend the Zoning Ordinance Sec. 21A.38 and Sec.21A.36 relating to Non-conforming Uses and Non-complying Structures to provide legal conforming status for single-family detached dwellings, two-family dwellings and twin homes

AFFECTED COUNCIL DISTRICTS: If the ordinance is adopted, the amendment will be applicable citywide.

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ADMINISTRATIVE DEPT. AND CONTACT PERSON: Community and Economic Development – Planning Division, Marilynn Lewis, Principal Planner

WORK SESSION SUMMARY/NEW INFORMATION:

1. The Council discussed the following items with the Administration during the August 7th Council Work Session:
 - A. Design guidelines are needed to ensure rebuilt structures are compatible with existing neighborhood structures. Guidelines should not be overly burdensome.
 - B. Steps or a process to address mobile home dwellings and compatibility issues in existing neighborhoods such as using the conditional use process to ensure that mobile home dwellings are compatible with existing structures.
2. On September 2, 2003, the Council continued the follow-up Work Session discussion and the Public Hearing to September 9, 2003. The Administration submitted a transmittal in response to questions raised during the Council Work Session August 7, 2003. The transmittal contains criteria addressing the following issues:
 - A. Manufactured Homes: Currently, the Residential Zoning District Chapter of the Zoning Ordinance includes criteria to address manufactured housing, including regulations which state minimum height requirements, entrance landing and foundation standards, and entry requirements.
 - B. The Administration is proposing to apply the same standards and criteria (as noted above) for legal conforming residential uses located in non-residential zoning districts. The proposed standards address the following:
 - i. Front façade controls
 - ii. Basement structures
 - iii. Foundations
 - iv. Entrance landings
 - v. Yard area setbacks
 - vi. Compatibility relating to scale and mass

The proposed amendments do include two items to enhance neighborhood compatibility – placement on the lot and scale / mass are addressed. A larger focus of the proposed amendments relates to the aspect of the conversation that the Council had about manufactured housing. If the scale / mass and placement amendments do not fully meet the Council’s intent, at some point in the future the Council may wish to ask that the Administration further address the over-all issue of establishing some very basic design controls for these situations. This could include, for example, reference to building materials, so long as such reference does not create a conflict with federal requirements associated with manufactured housing.

POTENTIAL MOTIONS:

1. [“I move that the Council”] Adopt the proposed ordinance amending the text of the Zoning Ordinance to provide legal conforming status for single-family and two family structures and twin homes in non-residential zoning districts.
2. [“I move that the Council”] Not adopt the proposed ordinance amending the text of the Zoning Ordinance to provide legal conforming status for single-family and two family structures and twin homes in non-residential zoning districts.
3. [“I move that the Council”] Adopt the proposed ordinance and request that the Administration further consider this issue as the over-all design guideline approach is advanced.

The following information was provided previously. It is provided again for your reference.

KEY ELEMENTS:

1. The Administration’s transmittal notes that the proposed text amendment would allow owners of single-family detached dwellings to gain financing for repairs that will help maintain the structures in a manner that is not only helpful in maintaining a quality housing stock in the City, but allows the properties to contribute to the character of the neighborhood.
2. Currently, 583 existing properties with single-family detached dwellings have been identified in a variety of commercial, mixed-use, special purpose and industrial zones.
3. The Zoning Ordinance defines a non-conforming use as any building or land legally occupied by a use at the time of the adoption of the Zoning Ordinance which does not conform with the use regulations of the district in which it is located.
4. The Administration’s transmittal explains that the purpose of the zoning text amendment is to allow single-family detached dwellings, two-family dwellings and twin homes that are currently considered non-conforming uses to be legally reconstructed if they suffer major structural damage. The text amendment would authorize alterations, extensions/additions, and replacement of any single-family detached dwelling, two-family dwelling or twin home (except those located in M-1 and M-2 zoning districts), subject to complying with all other current, local or state development standards. The reconstruction of homes in the M-1 and M-2 zones would require a conditional use.
5. The purpose of the Non-Conforming Use/Non-Complying Structure section of the Zoning Ordinance (Sec. 21A.38) is to provide regulations and standards that regulate the continued existence of:

- A. Principal and accessory uses established prior to April 12, 1995 that do not conform to the use regulations in the zoning districts in which the uses are located.
 - B. Buildings, structures and property improvements constructed prior to April 12, 1995 that do not comply with the applicable bulk and/or yard area regulations in the zoning districts in which the buildings or structures are located.
 - C. Current requirements and standards provide for:
 - Continuation of use
 - Repair, maintenance and structural safety
 - Abandonment or loss of the use or structure
 - Moving, enlarging or altering non-conforming uses or non-complying structures
6. The proposed amendment would refine and expand current provisions that address single-family and two-family non-conforming uses. Currently, the Zoning Ordinance provides legal conforming status for single-family dwellings within the CN, CB, G-MU or D-3 districts and for two-family dwellings or twin homes in any zoning classification. There are no restrictions on the square footage of the replacement structures other than compliance with required yard area setbacks and height specified in the zoning district. Parking is required to be equal to or more than the number of parking stalls being replaced.
7. The proposed text amendment includes the following requirements:
- A. In zoning districts other than M-1 and M-2, (which do not allow residential uses) the replacement structure may exceed the original footprint of the existing structure by twenty-five percent if the structure has been destroyed by fire, voluntary demolition or natural calamity.
 - B. Replacement structures which exceed twenty-five percent of the original footprint, or the replacement of a single-family detached dwelling, two-family dwelling or twin home in an M-1 or M-2 zoning district may be allowed as a conditional use.
 - C. Replacement structures shall not project into a required yard area beyond any encroachment established by the structure being replaced.
 - D. The number of new parking stalls provided shall be equal to or greater than the number of parking stalls being replaced.
8. The Administration's transmittal and Planning staff report provide a detailed discussion of the proposed text amendment. The Planning staff report provides findings of fact that support the criteria established in the City's Zoning Ordinance, Section 21A.50.050 – Standards for General Zoning Amendments. (Please refer to the Administration's paperwork for additional details.) Key elements include:
- A. Most of the residential uses in industrial zones mainly exist in the Swedetown Neighborhood of Capitol Hill (west of Beck Street at approximately 1400 North.)
 - B. Owners of homes in industrial zones will be allowed to request the reconstruction of their homes, as a conditional use to ensure appropriateness of residential uses in these zoning districts.
 - C. Many lenders refuse to lend on properties that cannot be rebuilt in their present location and zone.
 - D. Often, lots located in commercial zoning districts cannot be resold as commercially usable property because they are too small to accommodate such a use. Until assemblage of properties takes place for redevelopment to a conforming use, the existing non-conforming use remains.
 - E. The City should take a careful look at allowing homes to be rebuilt in areas of intense industry, where there could potentially be exposure to certain byproducts of that industry (vapors, dust, or contaminants). Since industrial zoned areas are scarce, the industrial land owners should have some protection from complaints by residential land owners of land use conflicts.
 - F. The City should be aware of issues related to rebuilding structures within the 100 year floodplain and on extremely steep slopes.

9. On January 8, 2003, the Planning Commission held a public hearing and voted to forward a positive recommendation to the City Council to amend the Zoning Ordinance. Issues discussed during the Planning Commission public hearing included:
 - A. Actions taken by the Planning Commission and City Council during the 1995 Zoning rewrite project relating to nonconforming existing duplexes, tri-plexes and four-plexes.
 - B. One Planning Commissioner noted that tri-plexes and four-plexes are not addressed in the proposed text amendment, though they were financially impacted by the (1995) down zoning. Planning staff noted that when the City Council was approached regarding the rebuild provision for duplexes in 1995, the issue of three- and four-family dwellings was also discussed. It was decided that two-family dwellings would receive legal conforming status. At the time, single-family dwellings in commercial districts were not an issue. *(Please note: Planning staff indicated to Council staff that the Zoning Administrator has been asked to study the issues generated by tri-plexes and four-plexes.)*
 - C. Two City residents noted that in their attempts to sell their property, they lost perspective buyers or could not obtain a rebuild letter because of the zoning and non-conforming status of their homes.
 - D. Two Planning Commissioners expressed reservations about allowing residential improvements in a general commercial zone, stating that approving this text change would impede good commercial development in commercial zones.
10. The public process included an open house conducted by the Planning Staff on December 9, 2002. Comments from those in attendance included concerns relating to:
 - A. Refinancing, mortgages, reconstruction financing, and insurance “reactions” to current zoning.
 - B. Parking requirements and neighborhood compatibility issues.
 - C. Potential increase in housing unit legalizations.

MATTERS AT ISSUE /POTENTIAL QUESTIONS FOR ADMINISTRATION:

1. Council Members may wish to discuss with the Administration how the proposed text amendment relates to the Legislative Action regarding non-conforming uses adopted by the Council earlier this year. (Please refer to the attached Legislative Action for details.) By way of background, on April 15, 2003, the City Council adopted a legislative action item sponsored by Council Member Carlton Christensen requesting the Administration to reevaluate the regulations relating to non-conforming uses in the Zoning Ordinance and provide the Council with ordinance language options to include:
 - A. Eliminating the current percentage limitations for reconstruction, improvement or expansion of non-conforming uses and non-complying structures.
 - B. Establishing refined standards, public notification and review process that include:
 1. Replacement, reconstruction, improvement or expansion of certain types of non-conforming uses and non-complying structures.
 2. Establishing categories of non-conforming uses and non-complying structures with a different level of review and public notification depending upon the impact to the surrounding neighborhood.
2. Council Members may wish to request an update from the Administration regarding compatibility and design review issues that continue to be raised regarding new or replacement construction in the community. For example:
 - A. The proposed text change allows, (in zoning districts other than M-1 and M-2, which do not allow residential uses), the replacement structure to exceed the original footprint of the existing structure by twenty-five percent if the structure has been destroyed by fire, voluntary

- demolition or natural calamity. Replacement structures shall not project into a required yard area beyond any encroachment established by the structure being replaced.
- B. Council Members continue to receive constituent calls regarding neighborhood compatibility issues relating to new or replacement construction in their neighborhoods. (Recent examples include 1788 Hudson Avenue (approx 2960 South 1700 East), 1877 South 2600 East, 684 North H Street.)
 - C. Past Council discussions relating to various zoning text amendments and rezoning requests have included compatibility and design related issues. The Council's recent discussions with Frank Gray focused on walkable community concepts, design guidelines, and neighborhood compatibility.
3. Council Members may wish to discuss with the Administration whether it may be appropriate to include the following in the ordinance:
- A. Reference to any applicable overlay zones or additional requirements in the Zoning Ordinance. This would provide upfront notification of all zoning requirements prior to application submission.
 - B. Reference to the ordinance adoption date so that the public is aware of when the change became effective. The current non-conforming provisions and other sections of the Zoning Ordinance contain language that refers to uses, buildings, structures and property improvements established prior to April 12, 1995 which is the adoption date of the zoning rewrite.
 - C. Reference to the Table of Permitted and Conditional Uses for Manufacturing Districts (Sec.21A.28.040) in the M-1 and M-2 industrial districts that indicate non-conforming single-family detached dwellings, two-family dwellings and twin homes may be allowed as a conditional use.

MASTER PLAN & POLICY CONSIDERATIONS (FOR PLANNING ISSUES):

1. According to the Planning Staff report, the zoning text amendment will not accommodate any new structures unless they are replacing an existing single-family home, duplex or twin home. Property owners will be able to maintain homes, but this proposed amendment does not preclude redevelopment or change to a commercial use. The Planning staff report states that in certain geographic areas of the City, legally conforming existing single-family and duplex dwellings will not necessarily comply with master plan policies that identify the areas for more intensive use. Some immediate impacts may occur with regards to master plans due to the continued maintenance of existing homes, but not to the extent that it would negate the direction of the master plan. The Planning staff report concludes that the significance would not warrant any type of master plan amendment. The Planning staff report points out that if this issue is not addressed, property deterioration will continue and become a negative factor to neighborhoods. Therefore, low density residential uses will not interfere with the long range future land use plans, or prevent the policies of the master plans from being implemented.
2. The Council has adopted housing policy statements that support creating a wide variety of housing types citywide. The Council's policy statements have been included in the City's Community Housing Plan. The policy statements address a variety of issues including quality design, public and neighborhood participation and interaction, transit-oriented development, encouraging mixed-use developments, housing preservation, rehabilitation and replacement, zoning policies and programs that preserve housing opportunities as well as business opportunities.

3. The City's 1990 Urban Design Element includes statements that emphasize preserving the City's image, neighborhood character and maintaining livability while being sensitive to social and economic realities. Applicable policy concepts include:
 - A. Allow individual districts to develop in response to their unique characteristics within the overall urban design scheme for the city.
 - B. Ensure that land uses make a positive contribution to neighborhood improvement and stability.
 - C. Ensure that building restoration and new construction enhance district character.
 - D. Require private development efforts to be compatible with urban design policies of the city regardless of whether city financial assistance is provided.
 - E. Treat building height, scale and character as significant features of a district's image.
 - F. Ensure that features of building design such as color, detail, materials and scale are responsive to district character, neighboring buildings, and the pedestrian.
4. The City's Strategic Plan and the Futures Commission Report express concepts such as maintaining a prominent sustainable city, ensuring the City is designed to the highest aesthetic standards and is pedestrian friendly, convenient, and inviting, but not at the expense of minimizing environmental stewardship or neighborhood vitality. The Plans emphasize placing a high priority on maintaining and developing new affordable residential housing in attractive, friendly, safe environments and creating attractive conditions for business expansion including retention and attraction of large and small businesses.
5. The Council's adopted growth policy states: It is the policy of the Salt Lake City Council that growth in Salt Lake City will be deemed the most desirable if it meets the following criteria:
 - A. Is aesthetically pleasing;
 - B. Contributes to a livable community environment;
 - C. Yields no negative net fiscal impact unless an overriding public purpose is served; and
 - D. Forestalls negative impacts associated with inactivity.

CHRONOLOGY:

- October 7, 2002. Memo and draft language was sent to City Departments, Community Council Chairs, and other interested parties for their comments and to determine interest in holding a public hearing.
- November 27, 2002. Open house notices were mailed.
- December 9, 2002. Planning Staff held an open house.
- December 20, 2002. Notices for the Planning Commission public hearing were mailed.
- January 8, 2003. The Planning Commission held a public hearing and passed a favorable recommendation to support the rezoning of the properties.

cc: Rocky Fluhart, David Nimkin, D.J. Baxter, Ed Rutan, Lynn Pace, Alison Weyher, David Dobbins, Louis Zunguze, Craig Spangenberg, Brent Wilde, Enzo Calfa, Doug Wheelwright, Cheri Coffey, Marilyn Lewis and Janice Jardine

File location: Community and Economic Development Dept., Planning Division, Zoning Text Amendment, Non-conforming Uses/Single-Family and Two-Family Dwellings