City of Albany

Planning and Zoning Commission
Staff Report

Meeting Date: September 23, 2008 **Prepared by:** BG

Agenda Item: 6e **Reviewed by:** JB

Subject:

Resolution of Intention of the Planning and Zoning Commission to Initiate Amendments to the Planning and Zoning Code to Correct and Clarify Development Regulations

Recommendation

Review the staff report and provide initial comments and recommendations to assist staff in drafting potential zoning ordinance revisions based on comments received during Planning and Zoning Commission meetings and in the "Zoning Ordinance Comments & Suggestions" notebook.

Background

As part of the Planning and Zoning Code ordinance revision in 2004, the Community Development Department provided a "Zoning Ordinance Comments & Suggestions" notebook for members of the public, the Commission and staff to insert comments and suggestions regarding potential revisions to the revised ordinance. Topics for further discussion have also been identified during Planning and Zoning Commission meetings.

Following is a discussion of each of the topic areas. The discussion review follows the order of the zoning ordinance. Any recommended changes to the text of the zoning ordinance have been shown in red, underlined text.

§ 20.08.020 DEFINITIONS (A-Z)

Background/Comments

In an application filed in 2007, the applicant at 1260 Brighton requested a variance to allow construction of a 6-foot tall wrought iron fence. The property is on a corner lot, and the fence was proposed to be constructed in what was considered the front yard, even though the existing building fronted on what is considered the side yard. The Commission asked that the question of front yards on corner lots be brought forward as part of any future Zoning Ordinance Amendments.

Zoning Ordinance Language

§20.08.020 Yard, front means a yard of uniform depth extending across the full width of the lot inward from the front lot line. The front yard of a corner lot is the yard adjacent to the shorter street front.

Discussion

Currently, the definition of a front yard on a corner lot does not allow for any flexibility. In the case of the application at 1260 Brighton, this resulted in the applicant having to request a variance for the fence height, even though the area in question functions as a side yard for the existing building.

Following are two options for how the definition for a front yard of a corner lot could be altered to allow for pre-existing conditions.

Option 1. The front yard of a corner lot is the yard adjacent to the shorter street front. However, if a corner lot has an existing main structure with the primary entrance oriented towards the longer street front, the longer street front shall be considered the front yard.

Option 2. The front yard of a corner lot will be determined by the Community Development Director. (Example from City of Maple Grove.)

§ 20.12.040 TABLE 1 & § 20.20.020.B - FAMILY DAY CARE HOMES

Background/Comment

From: Staff
In §20.12.040-Table 1 "Permitted Land Uses by District", Large Family Day Care Home, Residential is listed as requiring a Use Permit in the R-1 zoning district. However, §20.20.20.B has more specific regulations for Family Day Care Homes that are not in agreement with and supersede Table 1. The specific regulation states:

***§20.20.020.B.2 Large** (Family Day Care Homes). State-licensed facilities that exceed the permitted occupancy of Small Family Day Care Homes may accommodate up to fourteen (14) children of less than eighteen (18) years of age, subject to approval of a **Minor Use Permit**.*

Large Family Day Care should be subject to a Minor Use Permit, not a Major Use Permit. This discrepancy can be corrected with the addition of the "-M" to signify that the use requires a minor use permit. Also, note 19 would reference the section regarding Community Care Facilities.

Zoning Ordinance Language

Land Use	R-1	R-2	R-3	R-4	RHD	SC	SPC	CMX	PF	WF
b) Large Family [19]	UP-M	UP-M	UP-M	UP-M	UP-M	-	-	-	-	-

19. Refer to Section 20.20.020.B.2.d. for special process of notice and hearing.

§ 20.20.130 - ENTERTAINMENT PERMITS

Background/Comment

Currently, an Entertainment Permit requires approval by the City Council, per §5-11 of the Municipal Code, "Amusement and Entertainment Permits". Such permits are a type of land-use control, and therefore it would be more appropriate that these applications come under the purview of the Planning and Zoning Commission. Staff is recommending that a new section be added under §20.20 of the Zoning Ordinance, "Regulations of Specific Land Uses." This new subsection would state that an Entertainment Permit would require a major use permit, and would reference the regulations of §5-11.

Zoning Ordinance Language

§20.20.130 Entertainment Permits

A. **Purpose**. This section establishes regulations for the granting of an entertainment permit. The standards are in addition to the requirements of Albany Municipal Code section 5-11.

B. **Use Permit Required**. A major use permit shall be required for any place where entertainment is provided within a bar, cocktail lounge, tavern, café, restaurant, hotel, motel, shall or public place where food, alcoholic or other beverages, or other refreshments are served.

Municipal Code Language

Note: The following revisions would need to be made to §5-11. Only subsections where revisions are necessary are shown.

5-11.6 Entertainment Permits Required in Place Serving Food or Refreshments. No person shall provide or permit any entertainment in a bar, cocktail lounge, tavern, café, restaurant, hotel, motel, hall or public place where food, alcoholic or other beverages, or

other refreshments are served, unless such person shall first obtain a major use permit to do so from the Planning and Zoning Commission ~~City Council~~ as hereinafter provided.

5-11.7 Application for Entertainment Permits. Applicants for entertainment permits shall file a written and signed application with the Community Development Department ~~City Clerk~~ showing the following:

b. A reasonable description of the entertainment, including type of entertainment, approximate number of persons engaged in the entertainment, and any further information about the entertainment and/or entertainers as the Planning and Zoning Commission ~~City Council~~ may deem necessary.

f. Such other reasonable information as to the identity or character of the person or persons having the management or supervision of applicant's business, as the Planning and Zoning Commission ~~City Council~~ or License Collector may deem necessary.

5-11.9 Administration; Rules and Regulations; Adoption of Rules and Regulations. The Planning and Zoning Commission ~~City Council~~ or their duly authorized representative,...

5-11.12 Exception, Application to Commission ~~Council~~. Any person who shall desire to carry on or conduct any amusement or entertainment or dance during the hours prohibited by subsection 5-11.10 and for a longer period than one (1) night, shall file a written application therefore with the Community Development Department ~~City Clerk~~ for presentation to the Planning and Zoning Commission ~~City Council~~. Such application shall contain a detailed statement of the type of amusement or entertainment or dance which the applicant desires to carry on or conduct and a statement of the reasons which, in the applicant's opinion, warrant the granting of same. Such application shall be filed with the Community Development Department ~~City Clerk~~ at least fourteen (14) days prior to the date upon which the applicant desires the granting of such permission. Thereupon, the Community Development Department ~~City Clerk~~ shall refer the application to the Chief of Police or his agent for investigation pursuant to subsection 5-11.8 and his recommendation to the . The Commission ~~Council~~ may grant such permission to applicant when, in its discretion...

§ 20.24.020. - TABLE 2.A, NOTE 14 AND TABLE 2.B, NOTE 4 - MAXIMUM BLDG HEIGHT

Background/Comment

From: Clay Larson, 8/18/08

"The current Zoning Ordinance sets the maximum height for an R-2 or R-3 building at "three stories or 35 feet above grade." For the SPC district, the maximum building height is "three stories or 38 feet above grade." ...staff and the P&Z Commission have chosen to simply ignore the references to "three stories." If the developer can squeeze four stories into

the allowed height limit, that is now acceptable. I don't think that this was the intent of the language of the current zoning ordinance. I think that the obvious intent here was to limit the maximum number of building stories allowed. Part of the problem here is that we don't seem to have a good definition of what a story is. Staff reports refer to 3 ½ story projects or projects with 3 stories over parking. Commission members have also expressed confusion here."

"I think that three-story maximum is appropriate for Albany in our residential districts and for our San Pablo and also Solano Commercial areas. I think that we should clearly define a building story and set a three-story height limit based on this. (Note: a suitable definition of floor taken from the APA Planners Dictionary is, "That portion of a building included between the upper surface of any floor and the upper surface of the floor next above except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above.")"

Zoning Ordinance Language

§20.24.020. Table 2.A. Note 14. Maximum building height is three stories, or 35 feet, above grade, except that the maximum height at the front setback line shall be 28 feet plus a 45-degree daylight plane. (See subsection 20.24.070.B)

§20.24.020. Table 2.B. Note 4. Maximum building height is three stories, or 38 feet, above grade, except that where the rear property line abuts a residential district, the maximum height or at the rear setback line shall be 20 feet plus a 45 degree daylight plane, or at the rear property line shall be 12 feet plus a 45 degree daylight plane. (See subsection 20.24.070.A)

Discussion

As Mr. Larson states above, one possible intent of these stipulations was to limit development to no more than three stories, but the language as written can be interpreted differently. This is due to the wording "or 35 feet", which implies a choice. If a developer were able to fit four stories within the 35-foot height limit, staff believes that the proposed project would meet the parameters set by the ordinance language. If the Commission prefers to limit development to no more than three stories, staff would recommend that the wording of the stipulation be revised.

> "Maximum building height is <u>35 (38) feet, not to exceed 3 stories</u>, above grade, except that...."

It could also be argued that the "or 35 feet" language was included purposefully. One of the most important changes in the zoning ordinance was the reduction in maximum heights in both the San Pablo Commercial district (from 45 ft to 38 ft) and the Solano Commercial, R-3

and R-2 districts (from 38 ft to 35 ft). With these changes, the building envelope would be reduced in size, regardless of the number of stories. Therefore, the language could also be interpreted to state a preference for three stories, but the "or 35 feet" would allow a project to have more stories as long as the maximum height was not exceeded.

§ 20.24.020. - TABLE 2.A, NOTE 19 - CONDITIONAL USE PERMIT FOR EXTENDING NON-CONFORMING WALLS

Background/Comment

From: Evan Flavell, P&Z Commissioner, 2/24/05
"Strictly read, the P&Z use permit setback exception for additions only applies to second story additions, i.e. 'which build over an existing wall or foundations.' and NOT, for example, to other new expansion such as rear-yard additions on new foundations."

"The 'horizontal' exemption was added about 10 years ago to broaden the applicability of the exception, and it has, in practice, been applied to such expansions. The regulation may, however, be construed to mean horizontal expansion of an existing second story above the existing footprint only."

"Is it appropriate to 'force' a jog in the wall line in rear yard additions where the main structure is non-conforming? If so, wouldn't this encourage building 'up' rather than 'back' into typically limited rear-yard open space?"

"If the intent is to allow rear-yard additions to extend non-conforming setbacks, the Ordinance needs revision on this point. It does not allow this now...."

Zoning Ordinance Language

§20.24.020. Table 2.A. Note 19. Exceptions to setback requirements may be made in the case of a second story addition to a single-family dwelling, as follows:

a) A second story addition may be built which builds over an existing wall or foundation which does not conform to the required setbacks, subject to design review by the Planning <u>and Zoning</u> Commission and obtaining a use permit. Existing walls which do not conform to the existing side or rear yard setbacks may be extended in an existing vertical or horizontal plane, subject to design review by the Planning and Zoning Commission and a use permit. Such extensions shall not further encroach on any required setback, (i.e., a nonconforming wall which encroaches one (1) foot into a required setback shall not be permitted to encroach two (2) feet) nor shall any extension create a new encroachment in another direction.

Discussion

The "and Zoning" language is proposed to be added for consistency with the remainder of the ordinance.

Historically, the Commission has attempted to require applicants to meet the minimum setback requirements when possible, allowing an extension of a non-conforming setback only in special circumstances. This is in keeping with the intent of the zoning ordinance, which establishes minimum setbacks for development to ensure open space between properties and uses.

In its basic form, this issue can be considered a question of design versus separation of structures. The primary reason to allow the extension of a non-conforming setback is so that a new addition is aesthetically in keeping with the existing structure. The primary reason to require that a new addition meet the minimum setback is to ensure adequate separation between adjacent structures. Any revisions to the zoning ordinance should be based on which of these two aspects, design or separation of structures, the Commission believes is more of a priority.

§ 20.24.050 - FLOOR-AREA RATIOS (GENERAL)

Background/Comments

The floor area ratio (FAR) requirements for single-family residences include a provision that any deck, patio or other usable open area with 3 or more sides (including a roof) shall be included in the calculation of gross square footage. However, the FAR requirements for multi-family residences and other developments do not include this provision, and therefore open areas with 3 or more sides could be excluded from the FAR calculations for any non-single-family developments.

Zoning Ordinance Language

§ 20.24.050.B.1.d. Decks, patios or other usable open areas shall be excluded from calculation of gross square footage, except where such element is enclosed on three (3) or more sides. (Two (2) walls and a solid roof shall be counted as three (3) sides.)

Discussion

To make this standard universal, staff would recommend creating a new subsection before "B. Single-Family Residences" with provisions that would apply to all developments.

20.24.050.B. Applicable to All Buildings.

1. Gross square footage shall include all covered space located on the site.

2. Decks, patios, courtyards or other usable open areas shall be excluded from calculation of gross square footage, except where such element is enclosed on three (3) or more sides. (Two (2) walls and a solid roof shall be counted as three (3) sides.)
3. Any interior space with a ceiling height equaling two (2) stories shall be doubled for purposes of calculating gross square footage. Exceptions may be made for stairwells with no habitable space above or below the stairs, and for a maximum of sixty (60) square feet of additional space, such as in an entry foyer, an internal atrium, or a study loft.

20.24.050.C Single-Family Residences. (Delete provisions 1.a, d and e from this section.)

§ 20.24.050 - FLOOR-AREA RATIOS (SINGLE-FAMILY RESIDENCES)

Background/Comments

The FAR calculations contain a provision that allows basement space to be excluded from the gross square footage calculation if the average height of the basement at the exterior (measured from natural grade) is less than 6 feet. As written, the provision is unclear as to where the measurements should occur. There is also concern that the 6-foot threshold might be too high, allowing a significant amount of building area that adds to the overall massing of the structure to be exempted.

Zoning Ordinance Language

20.24.050.B.1.c. Any covered area on or below the first or main floor, for which the average height of the four (4) corners is greater than six (6) feet above the natural grade at the exterior, shall be included in the calculation of gross square footage, except a single parking area may be excluded as provided in paragraph a.1(b) above.

Discussion

The first revision that staff would recommend would be to insert language that stipulates where the measurement of the exterior basement height should occur. One potential change:

> "Any basement area for which the average height of the four (4) corners is greater than four (4) feet from grade to finished floor of the story above, shall be included in the calculation of gross square footage, except a single parking area may be excluded as provided in paragraph a.1(b) above. Measurement of height shall be taken from the lower of natural or finished grade to the top of finished floor of the first or main story."

This example stipulates exactly where the measurements are taken from (finished floor and grade). The language regarding the lower of either natural or finished grade is intended to take into account both flat and sloped lots. If the definition were limited to only "natural"

grade, a development on a sloped lot could cut into the lot and have a finished grade that was lower than the natural grade, and therefore the measured height would be less than the actual height. This would result in a condition opposite to the intent of the provision. Looking at the other extreme, if the definition were limited to only "finished" grade, a development on a flat lot could build up the finished grade of the property, resulting in a taller structure.

A second area of discussion is the appropriate height at which basement space should be excluded. As currently written, the allowance of partial basements that can be excluded from the square footage calculations if the exterior height is 5 feet 11 inches or less can encourage taller buildings.

To make this provision more restrictive, staff would recommend that the height be reduced from six feet to four feet, as indicated in the draft definition above. This alteration would continue to meet the intent of the provision, but result in a smaller increase to the overall massing of a building.

§ 20.24.050 – FLOOR-AREA RATIOS (CALCULATION OF ENCLOSED PARKING AREA)

Background/Comments

For Commercial, Multifamily and Mixed Uses, subsection C.1 states that enclosed parking areas must be located entirely below grade to be excluded from FAR calculations. The intent of this provision was to encourage parking for these uses to be located in an area that would not add to the overall massing of these larger projects. However, because of the small length of the majority of lots in Albany (typically 100 feet), it would not be possible to provide a ramp from street grade to the floor of a entirely below grade basement level that would also allow an adequate turning radius to access parking.

One way to make below ground parking areas practical would be to allow a portion of the area to be above ground. Staff would recommend that the allowance be set at the same level as suggested for single-family basement space, four feet above grade.

Zoning Ordinance Language

20.24.050.C.1. Enclosed parking areas for which the average height of the four (4) corners is less than four (4) feet from grade to finished floor of the story above ~~that are located entirely below grade~~ shall not be included in calculating the Floor Area Ratio of a development project. Measurement of height shall be taken from the lower of natural or finished grade to the top of finished floor of the first or main story.

§ 20.24.070 - SETBACKS WITH DAYLIGHT PLANES

Background/Comment

From: Clay Larson, 8/18/08

"I think that we need to reestablish the rear setback requirements where a commercial parcel abuts residential in the San Pablo Commercial (SPC) and Solano Commercial (SC) districts. These requirements existed with the previous zoning ordinance. I think that a case could be made that the setback requirements still exist with the current ordinance, but staff and the commission have concluded that the separate daylight plane calculations eliminate the need for any setback."

"A rear setback requirement in SPC and SC is critical to minimize the impact of large-scale commercial or mixed-use projects on adjoining residential districts. There needs to be a separation, a buffer, between these very large projects and neighboring residential parcels. I believe that most if not all neighboring cities impose setback requirements under these circumstances. It would be helpful if staff reviewed the requirements of other cities here and report their findings to the Commission. I think that the recent 934 San Pablo Ave. proposal, which would put decks and people at the rear property line, 12' - 15' above and overlooking the adjacent Adams St. parcels should be reviewed as an example of the problems associated with the lack of any setback. I think that Commissioner Moss's recent comments about building to the lot lanes and the problems that this can create during construction and maintenance should also be considered. I think that the P&Z Commission should consider these points and carefully review the need for rear setbacks where commercial and residential districts meet."

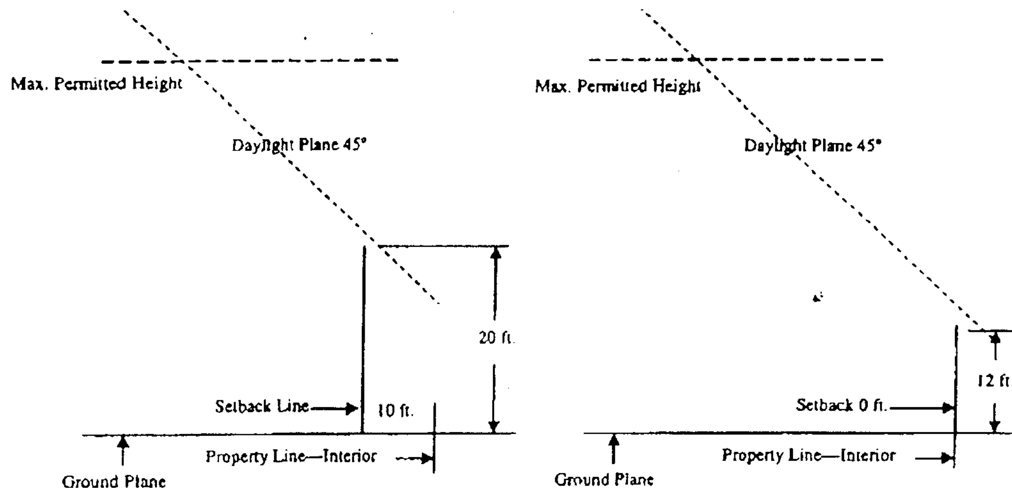
"The basic purpose of the daylight plane requirement is to minimize the impact of a building's shadows on adjacent properties. Daylight plane requirements limit the maximum building height by imposing additional setbacks for portions of the building that exceed some threshold height. Section 20.24.070.A. describes the procedures for calculating daylight plane requirements in SC and SPC for interior property lines (rear and side) that abut a residential district. Two procedures are described. The first defines the daylight plane as a 45 deg plane drawn from a base point located 20 feet above the ground plane at the minimum required setback. This definition is completely consistent with the initial language of §20.24.070.A, which specifies the required "minimum setback" and then describes an "additional setback for any portion of any structure extending above twenty (20) feet in height..." The definition is also consistent with the basic definition of a daylight plane in the ZO, i.e., "'Daylight Plane' means a tilted plane that connects a vertical plane with a horizontal plane for the purpose of supplementing applicable setback "(§20.08.020)."

"Section 20.24.070.A. provides an alternative definition of the daylight plane, which locates the base point of the plane at the rear property line 12 feet above the ground plane. This

definition is not consistent with the rest of the section in that it doesn't describe an "additional setback." Instead, it completely eliminates the minimum setback! The second definition also slides the daylight plane back two feet thus increasing the shadowing impact on the adjacent parcel. The second definition of the daylight plane is not an "alternative," it's a substitute definition. We should delete this second definition and use the first definition."

Zoning Ordinance Language

Note: Subsection A of this section provides daylight plane requirements that are applicable to specific interior property lines. As Mr. Larson notes above, the standards offer two separate options. The first option requires a 10-foot setback from the property line, with the daylight plane beginning at a height of 20 feet. The second option does not require a setback from the property line, and the daylight plane begins at a height of 12 feet.



Discussion/ Questions

In application, the use of the second option allows a larger building envelope than the first option. Therefore, as written, the ordinance does not give any incentive for a development to be setback from the property line.

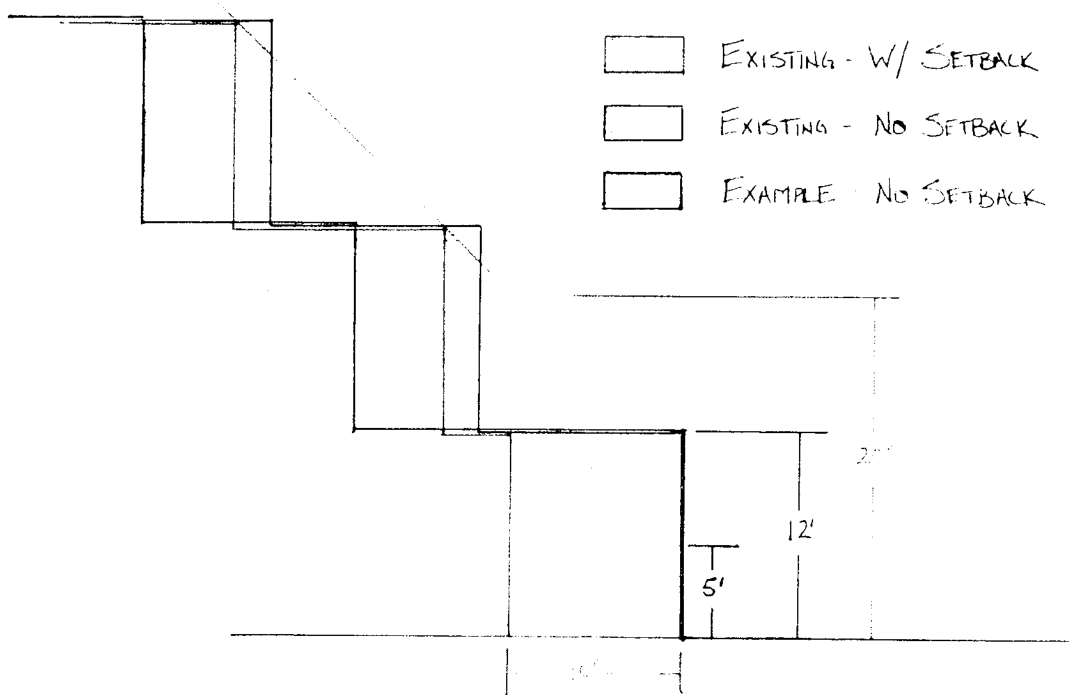
If the Commission were of the opinion that a minimum rear yard setback should be required for all parcels, then staff would agree with Mr. Larson's recommendation that the second option be deleted from the zoning ordinance.

Another option would be to make the daylight plane for a development that has no setback requirement more stringent than the daylight plane with the setback requirement. One adjustment that could be made to result in a more equally sized building envelope would be to lower the height at which the 45 degree angle daylight plane begins in the second option.

By reducing the starting point from 12 feet to 5 feet, the resulting building envelopes would more closely match. The diagram below shows the basic effect of the change.

Figure 1 - Daylight Plane Comparison

The basic outline of each of the daylight planes, shown for 12-foot stories.



Other potential solutions include:

- Lowering the angle of the daylight plane for the second option, resulting in larger setbacks between stories.
- Raising the height of the point at which the daylight plane is measured in the first option (i.e. from 20 feet to 24 feet), though this could be argued to result in negating the intent of the daylight plane requirement.

In addition, Attachment A gives examples of rear yard setback requirements for commercial districts that abut residential districts. All five jurisdictions examined (Berkeley, El Cerrito, Richmond, Emeryville and Oakland) have some minimum setback requirement.

§ 20.24.070 -DAYLIGHT PLANES, WHERE APPLICABLE

Background/Comment

From: Clay Larson, 8/18/08
"Besides the daylight plane requirements for interior lot lines in SC and SPC, there are several other references to daylight planes in the ZO. For the most part, the requirements are clear here except for the front setbacks in R2 and R3. Section 20.24.020, Table 2A, Footnote 14, sets maximum building heights and includes daylight plane requirements at the front setback for multifamily units. The procedure for calculating the additional required setback is apparently described under §20.24.070.B.2., except that this section specifically references R2/R3 parcels fronting on Kains and Adams. These specific references are obviously incorrect since the requirements apply to any R2/R3 district. The references to Kains and Adams should be deleted under §20.24.070.B.2."

"In addition to the above, I think that we should expand the daylight plane requirements to include any instance where a residential high-density or medium density district project abuts a residential parcel at its rear lot line. The impacts here are identical to those in SC and SPC. Even though a longer, 15' rear set-back requirement exists in R2/R3, the impact of shadowing should still be limited by imposing the additional setback requirements for the taller portions of a building. Applying the basic day-light plane geometry in this case would mean that the maximum height at the 15' rear set-back would be 25'."

Zoning Ordinance Language

20.24.070.B.2 Where a property in a Residential Medium Density District (R-2) or a Residential High Density District (R-3) has an exterior lot line on either Kains Avenue or Adams Street, the minimum setback from such lot line shall be fifteen (15) feet...

Discussion

As Mr. Larson states above, the inclusion of Kains Ave and Adams St results in the regulations not being applied in the same way to all R-2 and R-3 districts, even though the impacts would be similar. Therefore, staff would recommend that the reference to Kains and Adams be deleted:

> "Where a property in a Residential Medium Density District (R-2) or a Residential High Density District (R-3) has an exterior lot line that abuts a residential district, ~~on either Kains Avenue or Adams Street,~~ the minimum setback from such lot line shall be fifteen (15) feet..."

Staff also agrees with Mr. Larson's assessment regarding the impacts of higher density residential districts that abut lower density residential districts. This could be dealt with by splitting subsection A into two separate regulations, the first being the existing regulation pertaining to the SC and SPC districts, and the second pertaining to all other districts.

> 20.24.070.A.2. The minimum setback where an interior lot line of a property in a higher density residential district abuts a lower density residential district shall be five (5) feet on the side and fifteen (15) feet on the rear. An additional setback for any portion of any structure extending above twenty (20) feet in height, up to the maximum height permitted in the district, shall be defined by a daylight plane extending from a base point located twenty (20) feet above the ground plane at the line of the minimum required setback, inclined away from the vertical at a forty-five (45°) degree angle.

§ 20.24.080 - HEIGHT LIMITS AND EXCEPTIONS

Background/Comments

Subsection B of this section lists architectural features (such as towers, chimneys and similar structures) that can be allowed to exceed the district height limit. Currently, allowing such a general exception would be subject to a use permit, as well as design review. Staff believes that this provision could be simplified so that these general exceptions are subject to design review approval only. The revised language would read as stated below.

Zoning Ordinance Language

20.24.080.B. General Exceptions. Subject to approval of a use permit, towers, spires, cupolas, chimneys, elevator penthouses, water tanks, monuments, flagpoles, theater scenery storage structures, fire towers, and similar structures may be erected to a height not more than ten (10) feet above the height limit prescribed by the regulations for the district in which the site is located, provided that no such structure shall be used for habitable space or advertising purposes, and provided that the aggregate of such structures does not cover more than ten

(10%) percent of the roof area of the top floor of the structure to which they are attached. All structures that exceed the district height limit shall be subject to design review.

Discussion

Staff believes that this provision could be simplified so that these general exceptions are subject to design review approval only. The changes would include replacing "use permit" with "design review" and removing the last sentence of the section, which will become redundant as a result of the inclusion of "design review".

> "Subject to design review approval ~~of a use permit~~, towers, spires… ~~All structures that exceed the district height limit shall be subject to design review.~~

§ 20.24.110 - FENCES, LANDSCAPING, SCREENING

Background/Comments

Subsection C.2 of this section references the granting of a "zoning permit", which is not discussed anywhere else in the zoning ordinance, and therefore there are no procedures in place for its implementation.

Zoning Ordinance Language

§ 20.24.110.C.2. Paragraph 2. Exception to height limit in front yard: a structure designed to provide a decorative gateway, such as an arbor, trellis or pergola, may occupy an area not to exceed twenty (20) square feet, with a maximum horizontal dimension of six (6) feet and a maximum vertical dimension of ten (10) feet, subject to granting of a ***zoning permit*** based on all of the following findings:

Discussion

Rather than create a new procedure that would require a more substantial renumbering of the Procedures section of 20.100, staff would recommend that the term "zoning permit" be replaced with a procedure that is already in place, such as administrative design review. The ordinance language would be revised as such:

> "subject to ~~granting of a zoning permit~~ administrative design review approval based on all of the following findings:"

Requiring administrative design review approval would have subsequent benefits, including allowing for adjacent owners and tenants to be notified and for a public hearing to be held before approval.

§ 20.24.130.H - ACCESSORY BUILDING SETBACKS

Background/Comments

From: Evan Flavell, P&Z Commissioner, 9/12/05
"§ 20.24.130.H. sets out the setback requirements for accessory buildings, where

> § 20.24.230.H.3. Accessory buildings on the interior side yard shall not encroach into the required side yard setback."

"It is argued that this provision is subordinate to the section heading at H., which more specifically outlines requirements for accessory buildings located in the rear setback area, and thus there are no setbacks required for side yard locations."

"The language was placed at H. for economy of space. There is no side yard in a rear yard, and setbacks were intended to apply in actual sideyard locations. The meaning would be clarified by amending to include the language "generally applicable to all accessory buildings" at the end of H."

Zoning Ordinance Language

§ 20.24.130.H. Setbacks. Accessory buildings located in rear setback areas shall be within six (6") inches of the side or rear lot line, or shall be set back at least three (3') feet, and shall be subject to the following provisions generally applicable to all accessory buildings:

1. Accessory buildings shall not have openings (windows, doors, and vents) within three (3) feet of the property line. This includes openings on walls that are perpendicular to a property line. An exception shall be made for garage (vehicle) doors.
2. Accessory buildings located on the street side yard of corner lots are required to meet the minimum setback requirements for the main building.
3. Accessory buildings on the interior side yard shall not encroach into the required side yard setback.

Discussion

Former Commissioner Flavell believes that this discrepancy can be corrected with the addition of the language "generally applicable to all accessory buildings" at the end of the section.

Another option would be to delete the reference to the "rear setback area" in the opening paragraph of 20.24.130.H. In this way, the opening paragraph would set the general setback parameters for all accessory buildings, and the provisions that follow the opening paragraph

would stipulate parameters that are more specific. Provision number 3 would no longer be needed in this scenario. The resulting ordinance language would appear as follows:

§ 20.24.130.H. Setbacks. Accessory buildings ~~located in rear setback areas~~ shall be within six (6") inches of the side or rear lot line, or shall be set back at least three (3') feet, and shall be subject to the following provisions:

1. Accessory buildings shall not have openings (windows, doors, and vents) within three (3) feet of the property line. This includes openings on walls that are perpendicular to a property line. An exception shall be made for garage (vehicle) doors.
2. Accessory buildings located on the street side yard of corner lots are required to meet the minimum setback requirements for the main building.
3. ~~Accessory buildings on the interior side yard shall not encroach into the required side yard setback.~~

§ 20.28.020 - GENERAL REGULATIONS (In regards to Carports)

Background/Comment

From: Evan Flavell, P&Z Commissioner, 2/24/05
"Citizens fill their garages with 'stowage', gate off their driveways, then desire protection for their vehicles parked in the front yard. A variety of cheap shelters are contrived, some made of PVC pipe. Some performance standards were added in the new ordinance at 20.28.020.I. to control paving and parking in front yards. Consider expanding this or adding another to impose limitations on such 'temporary' carport structures in driveways. Also, how do we feel about canvas car covers and tarps, as well?"

Zoning Ordinance Language

§20.28.020.I. Limitation on Paved Area of Front Yards. Any paved area between the front property line and the front of a building shall be limited to a walkway for entry access, and a driveway not to exceed sixteen (16) feet in width, that forms a direct route from the street to a garage or other parking space deemed acceptable by the Community Development Director. The Planning and Zoning Commission may grant an exception to this limitation, based on unusual conditions of the site, such as topography, size, location or visibility. No parking of vehicles shall occur in any unpaved portion of a front yard.

Discussion

Does the Commission believe that this section should be expanded to cover carport structures and the like?

Staff did find one example of a city (Arlington, TX) that allows carports if 11 conditions can be met. Some of the conditions of interest include:

- Is the carport structurally integrated with the roof of the principle structure or less than 18 inches from the principle structure?
- Are the supports for the carport painted a color to match or replicate the color of the trim areas of the principle structure?
- Does the carport have a pitched roof that is either a closed gable or hip design that matches the existing pitch of the principal structure and utilizes shingles that substantially match the color of the shingles used on the principle structure?
- Is the carport 8 feet or less in height at its shortest wall?
- Are all sides of the carport that are within the required front yard open and unobstructed, except for support columns?
- Do the columns obstruct less than 15 percent of the area of any side?
- Does the carport cover an appropriate surface designed for vehicle storage?

If the Commission is of the belief that carports should be regulated, discuss which, if any, of the conditions of interest should be included in the new regulations.

§ 20.28.050 - PARKING AREA STANDARDS

Background/Comment

From: Evan Flavell, P&Z Commissioner, 1/26/05
"Our first application under the new ordinance (910 Santa Fe) involved removal of rear-yard parking and provision of two spaces in the side yard. The driveway width met the 10'-6" width requirements, except an existing bay window feature extends 1'-6" into a portion of the length of each of the proposed parking spaces provided."

"While the ordinance does provide for the Commission to allow for local obstructions in existing garages, no specific exception is provided for new spaces. The Commission approved the application, notwithstanding."

"While the bay does not block the vehicles themselves, it does somewhat limit access to them. Even this limited inconvenience may deter use of the spaces for parking as proposed. In similar situations, the requisite spaces are used for storage, and parking occurs in the front yard, usually one car only."

"Review the Parking Ordinance for specific consideration of local obstructions."

Zoning Ordinance Language

§20.28.040.A.6 Existing Garages. The Planning and Zoning Commission may find that an existing garage meets the requirements for an off-street parking space if the interior dimensions of such garage are not less than sixteen (16) feet in length, and eight (8) feet in width, for a single garage, or sixteen (16) feet in width for a double garage, and six (6) feet six (6) inches in height. The Planning and Zoning Commission ***may allow a local obstruction (such as a chimney, stairs or other feature) to protrude into the required parking space dimension, upon finding that such obstruction does not impede the ability to park vehicles in the garage.***

Discussion/ Questions
One option for resolving this issue would be to remove the last sentence of the above referenced ordinance language, and create a new exception (#8) for "Local Obstructions". This change would make the "Local Obstructions" provision applicable to all garages and parking spaces, not just existing garages as currently written.

§20.28.040.A.8 Local Obstruction. The Planning and Zoning Commission may allow a local obstruction (such as a chimney, stairs or other feature) to protrude into the required parking space dimension, upon finding that such obstruction does not impede the ability to park vehicles in a required garage or open parking space.

§ 20.40 - HOUSING PROVISIONS

Background/ Comment

A "Law Alert" from Goldfarb Lipman Attorneys dated August 4, 2006 discussed a decision by a San Diego County Superior Court. The court "found that San Diego's inclusionary zoning ordinance constituted a 'taking' because of the lack of a properly drafted 'waiver' provision. An excerpt from the "Law Alert":

> "Some builders and others have challenged the constitutionality of these (inclusionary) ordinances. In the only published California decision, the City of Napa's inclusionary housing ordinance withstood a court challenge (Home Builders Association of Northern California v. City of Napa, 90 Cal. App. 4th 188 (2002)). The Court of Appeal decided that the challenge could not be successful because Napa's ordinance included a "waiver" provision. The provision allowed developers to ask for a reduction in the ordinance's requirements if there was no "reasonable relationship" between the impact of development and the inclusionary requirement."

Goldfarb & Lipman LLP went on to advise that if cities want to protect themselves, they may want to ensure that their inclusionary ordinances include waiver provisions with wording

similar to that used by the City of Napa. Staff would recommend that the following section be added to the Housing Provisions chapter as §20.40.080.

Zoning Ordinance Language (from Napa Zoning Ordinance)

Adjustment.

A. A developer of any project subject to the requirements in this chapter may appeal to the city council for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the fee charged or the inclusionary requirement.

B. A developer subject to the requirements of this chapter who has received an approved tentative subdivision or parcel map, use permit or similar discretionary approval and who submits a new or revised tentative subdivision or parcel map, use permit or similar discretionary approval for the same property may appeal for a reduction, adjustment or waiver of the requirements with respect to the number of lots or square footage of construction previously approved.

C. Any such appeal shall be made in writing and filed with the city clerk not later than ten (10) days before the first public hearing on any discretionary approval or permit for the development, or if no such discretionary approval or permit is required, or if the action complained of occurs after the first public hearing on such permit or approval, then the appeal shall be filed within ten (10) days after payment of the fees objected to. The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The city council shall consider the appeal at the public hearing on the permit application or at a separate hearing within sixty (60) days after the filing of substantial evidence to support the appeal including comparable technical information to support appellant's position. No waiver shall be approved by the city council for a new tentative subdivision or parcel map, user permit or similar discretionary approval on property with an approved tentative subdivision or parcel map, use permit or similar discretionary permit unless the council finds that the new tentative subdivision or parcel map, user permit or similar discretionary approval is superior to the approved project both in its design and its mitigation of environmental impacts. The decision of the council shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirement.

§ 20.100.010.E.4.B - NOTICE REQUIREMENTS FOR RESIDENTIAL DESIGN REVIEW

Background/Comment

California law requires that public notice be provided for specific projects, such as use permits and variances. This is referenced in the Zoning Ordinance under provision

20.100.010.E.1. "State Requirements", which states that "notice shall be provided in accord with the California Government Code, as stated in Sections 65090 and 65091 thereof." One of the provisions of these specific sections of the government code is that notice must be mailed or delivered to all property owners within 300 feet of the exterior boundary of the subject property.

Design Review approvals are not subject to the public notice requirements under California law, but the City of Albany has chosen to include its own noticing requirements for Design Review anyway, under subsection 20.100.010.E.4. This subsection states that public notice for Design Review is only required to be mailed or delivered to property owners within a 100-foot radius of the subject property, not the 300 foot requirement as stated in the government code.

As currently written, it could be argued that the language of subsection E.1, "State Requirements", including the 300-foot mailing radius requirement, should apply to all portions of E, including subsection E.4.

Zoning Ordinance Language

20.100.010.E.4.b. Mailing. The Community Development Department shall mail such notice to all owners of any property, any portion of which lies within one hundred (100) feet of the external boundaries of the project site, at least ten (10) calendar days prior to the meeting.

Discussion

To clearly differentiate the noticing requirements for residential design review, staff would recommend that additional language be added at the end of subsection E.4.b, as follows:

> "...at least ten (10) calendar days prior to the meeting, <u>notwithstanding California Government Code Sections 65090 and 65091</u>."

<u>§ 20.100.080.C.1 - ADMINISTRATIVE ACTIONS APPEALABLE</u>

Background/Comment

The section on "Administrative Actions Appealable" references the ordinance incorrectly, using the wording "Code" rather than "chapter" as used throughout the remainder of the ordinance. Making the following minor wording revision would make the language consistent.

Zoning Ordinance Language

§20.100.080.C.1. Administrative Actions Appealable. Any person aggrieved by a decision to grant or deny a permit or action taken by the Planning staff or any other City Official under

the provisions of this chapter, or any person aggrieved by an administrative determination or interpretation made in conjunction with a decision to grant, deny or comply with a determination made pursuant to a provision of this ~~Code~~ chapter, may appeal such action to the Planning and Zoning Commission.

MISCELLANEOUS #1 - GREATER THAN 50% DEMOLITION OF BUILDING

Background/Comment

In 2005, the east wall of 1620 Sonoma, which was in a non-conforming location, was granted a use permit to allow the wall to remain in place and to be extended horizontally for a rearward extension of the ground floor by 8 feet, and vertically for the new second story. During construction, all of the interior and exterior walls of the existing one-story residence were demolished, leaving only the foundation and sub-floor in place. The applicant was allowed to build according to the approvals, but the Commission asked that this issue be brought forward as part of any future Zoning Ordinance Amendments.

Zoning Ordinance Language

The following section, under "Restoration of Damaged Structures", is not specific to the voluntary demolition of non-conforming walls, but staff believes that the implied intent of this section would be applicable.

20.44.050.A. Nonconforming Uses or Structures. A nonconforming structure, or a structure containing a nonconforming use, which is destroyed to the extent of not more than fifty (50%) percent of its replacement value by fire, wind, flood, earthquake or other calamity, may be restored to its prior condition and use provided that the restoration is started within twelve (12) months from the date destruction occurred and is diligently pursued to completion. If such damage or destruction (or voluntary or legally-mandated razing) exceeds fifty (50%) percent of the replacement value, then the structure and its use shall conform to the provisions of this Chapter.

Discussion/ Questions

Even though the above section deals with the restoration of damaged structures, staff believes that the language indirectly relates to the issue of demolishing non-conforming walls. The underlined section does mention "voluntary razing", with the requirement that if the razing exceeds 50% of the replacement value, the structure shall conform to the ordinance (which would include setback requirements).

However, §20.24.020. Table 2.A. Note 19 (a) states that "a second story addition may be built which builds over an existing wall or foundation". With that wording, does the continued

existence of the foundation at the nonconforming location allow the wall to be rebuilt above the foundation?

One potential requirement that could make this type of situation less likely in the future would be to require that a Structural Engineer submit signed correspondence that the wall and/or foundation for which a conditional use permit is being requested is structurally adequate to allow a vertical or horizontal expansion.

To help guide any future revisions to the ordinance in regards to demolition of nonconforming walls, staff requests that the Commission provide answers to the following questions:

- Should the re-construction now be required to meet the zoning setback if a certain percentage of the building is demolished?

- Because §20.24.020. Table 2.A. Note 19(a) says "over an existing wall or foundation", does the continued existence of the foundation at the nonconforming location allow the wall to be rebuilt above the foundation?

- Is the physical continuity of the wall essential , or is it sufficient that a wall existed at the beginning of the project, and a wall will exist in the same location on completion of the project?

- In future cases of this type, should the use permit contain a condition that removal of the nonconforming wall will cause the use permit to terminate?

- Should the Zoning Ordinance be amended to specify that such a use permit can be granted only to accommodate the extension of an existing wall that will remain as part of the structure?

- Should applicants be required to establish integrity of existing walls before approving extensions of non-conforming setbacks?