

**CITY OF WEST DES MOINES
DEVELOPMENT AND PLANNING
CITY COUNCIL SUBCOMMITTEE MEETING
Electronic Meeting, with City Hall Training Room available to the public**

Monday, July 20, 2020

Attending:

Council Member Matt McKinney
Council Member Renee Hardman
Deputy City Manager Jamie Letzring
City Attorney Richard Scieszinski
City Engineer Brian Hemesath
Development Director Lynne Twedt
Development Coordinator Linda Schemmel
Building Official Rod Van Genderen

Asst. City Attorney Jessica Spoden
Principal Engineer Ben McAlister
Planner Brian Portz
Planner Kara Tragesser
Planner Brad Munford
Planner Karen Marren
Fire Marshal Mike Whitsell
Planning Intern Sean Griffin
Planning Intern Piper Mauck

Guests:

Item #1 - None

Item #2 – Lt. Brent Kock, WDMPD

The meeting of the Development and Planning City Council Subcommittee was called to order at 8:01 AM.

1. Variance & Special Exceptions

Jessica Spoden, Assistant City Attorney, presented a proposed amendment to City code which would allow the Board of Adjustment to approve special exceptions for resident requests which do not present objections by neighbors. Current state-defined variance criteria require standards to be met which would prevent approval of most variance requests. This proposal was discussed with the Board of Adjustment and met with approval subject to review of final language, however the code amendment will require Council approval to implement. Ms. Spoden presented several examples to illustrate the benefit of this amendment to residents.

Ms. Spoden supplied examples from other metro area jurisdictions, including language from the City of Des Moines regarding their implementation of special exceptions. This implementation allows the “practical difficulty test” which reviews the impact to the neighborhood rather than proving a hardship. It was determined the WDM Board of Adjustment takes this type of test into account with their current variance review. Adding this special exception amendment provides residents with an additional tool for those who live in areas of town which may not meet the hardship requirement.

Council Member McKinney clarified that all requests are currently done via a variance to accommodate a situation caused by an undue hardship. Ms. Spoden stated that is the only option with current code, other than a PUD amendment. Council Member McKinney questioned 414.12, paragraph 2, whether West Des Moines has ever authorized/approved/taken action using special exception code. Ms. Spoden responded that this code is applied to special uses, such as churches. City Attorney Scieszinski stated the State allows this, and Des Moines has implemented for 20 years without challenge, therefore the City feels to move forward with this is not imprudent.

Council Member McKinney asked if there are other Cities within the state who have created a framework to provide guidance. Ms. Spoden noted various Cities who have implemented use of a special exception allowance, and that many of them are mirroring Des Moines’ code.

City Attorney Scieszinski stated the Board of Adjustment typically evaluates the project rather

than the hardship, but to be technical, its very rare to prove a hardship not of the owner's own making. This would be a good way to allow a practical application of the code. Weighing neighbor input can be inequitable.

Council Member McKinney asked if BOA had any feedback. Ms. Spoden – they realized they are already applying practical difficultly standards when there isn't a lot of pushback from the neighbors, and they are supportive.

Council Member Hardman asked what the next step for this amendment. Ms. Spoden stated that if the subcommittee is supportive, legal would draft a code amendment and it would go before full Council unless the subcommittee would like to review final language first.

Council Member McKinney stated he would like an informal review prior to full Council. Council Member Hardman agreed.

Ms. Spoden noted that special exceptions would be written to apply only to numerical requests and would not be applicable to land uses.

Direction: Council Members were supportive of the code amendment, requesting to review the final language prior to presentation to full City Council.

2. Code Amendments

1. Building Code Update

Director Twedt provided a brief overview of the code update process, which occurs every three years, noting that the metro Homebuilders Association has already reviewed and is comfortable with pending changes, and opportunity was made for the public to ask questions.

Council Member McKinney asked if there were any concerns, or areas of controversy. Rod VanGenderen, Chief Building Official, noted that the Des Moines Homebuilders Association was part of the review process, and their Executive Committee had no concerns. They would be informed of the Council approval date if they wished to express comments.

Fire Marshal Mike Whitsell informed that the Fire Code has already been vetted by the Central Iowa Code Consortium and will continue moving through the review process for adoption to be in line with the building code.

2. Animals Wild by Nature

Director Twedt presented a brief summary of definitions of agricultural animals written for a code update, as a follow-up to an earlier subcommittee discussion to differentiate pets from agricultural animals. Response to comp plan surveying brought some interest in backyard chickens, with about equal opposition, and the majority expressing no opinion.

Planner Brian Portz presented a table illustrating which metro jurisdictions allow backyard chickens and under what terms. Staff has been working on a proposed Code amendment that would allow chickens in all residential zoning districts on lots over 40,000sf in size, a change from current restrictions that allow chickens based on zoning designation only (Open Space and Residential Estate zoning).

Council Member Hardman mentioned a recent resident's request to have chickens and whether that citizen would be allowed to have chickens under this amendment. Mr. Portz informed that the resident has an approximately 7,000sf lot, so they would not be able to keep chickens. Council Member Hardman asked why this is different from what Des Moines allows.

Director Twedt responded that the allowance to have chickens is each community's decision: Des Moines has chosen to allow chickens on all residential lots, while previous conversations with the Subcommittee have resulted in the mindset that chickens are appropriate for the country, not the city. WDM has decided to limited chickens to on Open Space and Residential Estate lots only.

Council Member Hardman asked if Waukee does not have a minimum lot size for chickens to be allowed. Planner Portz affirmed that to be true. Council Member McKinney inserted that Des Moines and Waukee do have setback requirements of 25 feet to provide some distancing.

Council Member Hardman asked about due process for the resident who has come before Council requesting to keep chickens. Allowing chickens has been brought up many times in the past but it was decided at the time to keep the regulations as is. A proposal approximately 5 years ago to make some changes stalled at the Plan & Zoning Commission. Previous council members on the Development & Planning subcommittee voted to not allow backyard chickens on smaller lots. Director Twedt stated there wasn't much response to the question of backyard chickens when made available through the Comprehensive Plan surveying. She cautioned that responses to surveys could be skewed by non-residents.

Assistant Attorney Spoden noted that there is a compliance side of this issue, and that Lt. Kock was online to comment on the enforcement issues faced by WDMPD Animal Control. Ms. Spoden informed that she has been involved in complaint issues, and that there are complaints of other types of birds being kept within the City as well.

Lt. Brent Kock stated that he oversees the Animal Control unit, adding they are not in favor of chickens being kept within City limits. He illustrated the limited resources WDMPD Animal Control has for managing loose chickens and responding to neighbor complaints regarding smell and noise. Lt. Kock provided a recent example of chickens which officers spent several hours attempting to retrieve. Council Member Hardman asked Lt. Kock to provide an update regarding the conclusion of that matter.

Council Member McKinney commented that the variety of animals is very wide, and that we are also trying to preclude the unintended consequences of having a bull in the backyard, not just chickens. Ms. Spoden stated rather than treating chickens separately, all agricultural animals were restricted together. If the City changed positions and wished to create an amendment for chickens specifically, they would have a separate line item in the use matrix. Director Twedt noted that the only separate ordinance now is one allowing bees, however a separate amendment could be created to allow chickens if desired.

There was additional discussion of conducting outreach to residents regarding this issue to see if there is interest in allowing chickens in all residential areas regardless of lot size prior to moving forward with any code amendments.

3. **Fence Update** – Due to the shortness of time, this item was deferred to August 3, 2020.

Direction: Council Members were supportive of the building code amendment and requested additional resident feedback prior to implementing any changes to the Animals Wild by Nature code.

3. Upcoming Projects – A map was provided with a brief description of the project.

- a. Banks Landing (NW Corner of S 86th St and Booneville Rd) – PP-004788-2020 Planner Johnson provided a summary of the status of this project. Council Member McKinney asked

the timeline for the completion of Booneville Road. An answer was not readily available; staff will provide that information following the meeting.

4. Minor Modifications & Grading Plans

- a. Grand Valley Plat 1 (Grand Valley Dr and S 35th St) – GP-004787-2020
- b. Strathmore (1260 S Jordan Creek Pkwy) – MML1-004779-2020
- c. Panera Bread (6740 University Ave) – MML2-004780-2020

5. Other Matters

None

The meeting adjourned at 8:55 AM. The next regularly scheduled Development and Planning City Council Subcommittee is August 3, 2020.

Lynne Twedt, Development Services Director

Jennifer Canaday, Recording Secretary