



Office of the City Manager

ACTION CALENDAR

November 15, 2005

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning

Subject: Amending "By Right" Residential Additions and Definition of a Story in the Zoning Ordinance

RECOMMENDATION

That the Council provide direction to staff by selecting one of the following options:

1. Refer the Councilmembers' request to the Planning Commission for its consideration and have staff return in January to discuss when a revised ordinance can be recommended by the Planning Commission and whether undertaking this project would delay other work already programmed for this year.

OR

2.
 - a. Direct staff to prepare an Urgency Ordinance modifying the Zoning Ordinance to make any addition above the first floor subject to discretionary review in the same manner as major residential additions, and modify the definition of a story, and bring it to the City Council for adoption by a 4/5 vote by December 13 2005; and
 - b. Refer the matter to the Planning Commission for consideration by the end of the term of the urgency ordinance, as it may be extended by the Council, but in any event no more than two years (the maximum permitted duration of an interim ordinance).

In either case, the Council needs to provide direction to staff regarding the geographic area to be covered by the interim ordinance (e.g., limited to the Hill Overlay district, or applied to all residential districts where major residential additions are allowed) and whether a first story as-of-right addition should be limited to the current 500 square feet or be expanded to 700 square feet.

OR

3. Request that this issue return as part of Council's consideration of the 2006-07 Planning Department Work Program.

FISCAL IMPACTS OF RECOMMENDATION

Depending on the direction, implementation of the proposal could require an additional permanent ½ to ¾ FTE Assistant or Associate Planner to process additional Administrative Use Permits, with an estimated cost of \$75,000 - \$100,000. Approximately half this cost would be covered by fees, with a net impact on the Permit Service Center fund of approximately \$37,500 - \$50,000. In the short term, the Permit Center fund balance could cover the deficit; it is unclear how the unfunded costs of this additional position will be covered in the long term.

CURRENT SITUATION AND ITS EFFECTS

Currently, the Zoning Ordinance allows additions of fewer than 500 square feet conforming to all zoning standards as a matter of right, subject to the limitation that the 500 square-foot cap includes all square footage added since 1992. In other words, a property owner may not add (for instance) 499 square feet every year as a matter of right.

The Zoning Ordinance defines additions of 500 square feet as “major residential additions.”¹ These require discretionary review by the Zoning Officer. The Zoning Officer’s decision may be appealed to the Zoning Adjustments Board (ZAB), and then to the City Council.

In effect, the proposal now before the Council would require that the definition of “major residential addition” be changed to include additions of fewer than 500 square feet if they are not on the ground floor.

On October 25, 2005, the Council considered a recommendation from Council members Olds and Wozniak to modify the City’s existing zoning regulations regarding residential additions. In particular, the recommendation was to:

- Permit, as of right, additions up to 699 square feet on the first floor – an increase from the current limit of 499 square feet.
- Require a discretionary permit (Administrative Use Permit) for any additions above the first floor of a residential structure; currently, additions of up to 499 square feet are

¹ The definition is as follows:

Addition, Major Residential: The construction of additional gross floor area to an existing building, where such floor area is 500 square feet or more. For purposes of this definition gross floor area shall include additions which either expand the building's footprint, excavations of earth which would create gross new floor area where less than six feet of vertical clearance previously existed, or add new stories that enlarge the building's shell; but shall not include additions of gross floor area devoted to required off-street parking spaces, creation of mezzanines or lofts within the building's shell, or making previous unusable attics into habitable floor area.

permitted as-of-right, regardless of location, so long as the addition conforms to the setback and height requirements of the zoning ordinance.

- Clarify the language of the zoning ordinance regarding stories so as to avoid single story additions that are considerably taller than a normal single story. According to the discussion at the Council, the recommendation was made to address by-right additions above the first story, which can have significant impacts on views, shadowing and privacy without an opportunity for staff, neighbors or the ZAB to influence the character and location of such additions and minimize or avoid those impacts. The proposal would require discretionary permits for all such additions.

During the discussion, Council members voiced several options and concerns and directed that staff return with some analysis of alternatives and impacts. Among the issues raised by the City Council were:

- Impact on the Planning Commission’s adopted work program, and the impact on staff resources.
- This proposal would lead to increased costs (in fees and delay) for relatively small additions; there was concern as to whether this is warranted, especially in flat-land areas where impacts on views and privacy are less of an issue.
- Are there other ways to implement this in the short-term without having an immediate impact on the Planning Commission’s work program?
- Should the current 500 square feet for as-of-right additions be retained or increased to 700 square feet for first story additions?

Each of these issues is addressed below, followed by some options for addressing the issue. Staff makes no recommendation but is seeking direction.

BACKGROUND

Impact on Adopted Work Program and Staff Resources

If there is an existing clear consensus about the changes desired in the Zoning Ordinance to address the issue raised by the Council members’ referral, the actual technical work involved in making the change is relatively small: a few hours to consider the changes, prepare a staff report and a draft ordinance modification. In theory, the Commission could recommend it to the City Council after a single public hearing.

However, what became clear at the City Council meeting is that there is no clear consensus on this issue. Normally in such cases, before the Planning Commission takes action it will request that staff engage in substantial analysis of alternative approaches. Once those approaches are analyzed, there is usually a protracted Commission discussion (and substantial staff drafting and

redrafting) of the exact language of a recommendation. The Commission would also generally request outreach to homeowner and other stakeholder groups. In other words, based on past experience, unless the Council provides clear, consensus direction to staff at this time, a change of this magnitude in the Zoning Ordinance would require a significant level of staff time that has not been programmed into the Department work program. Such an effort undertaken in the next 120 days (as requested in the Council members’ item) would lead to displacement or delay of other work program items, absent an increase in staffing levels to accommodate the increased work. If the Council wishes to move forward with this referral to the Planning Commission on an “as soon as possible” basis, staff recommends that staff be given the opportunity to return in December or January with an update as to where we are with this year’s work program so that the Council can provide direction as to what items in the work plan should be deferred.

In regard to impacts on staff resources, staff has done a very preliminary analysis of the number of permits not currently subject to discretionary review that would be subject to discretionary review under the proposed changes. Staff roughly estimates that implementation of the proposed changes would require a half to three-quarters staff planner; only about one-half of the costs of the planner would be covered by the fees charged. If the area covered by the proposal were to be limited (see below), then the costs should also be reduced proportionally.

Short-term Approaches

Under Section 65858 of the Government Code, the City may, by a 4/5 vote (at least 8 votes), adopt an interim urgency ordinance modifying the zoning ordinance while it considers a more permanent change to the ordinance. Assuming the Council wants to act as quickly as possible, the initial urgency ordinance would be effective only for 45 days. Before that period expired the Council would need to hold a noticed public hearing to extend it, for up to 10 months and 15 days, after which it would expire. The Council could then approve a final one- year extension, after another noticed public hearing.

Staff believes the findings for adoption of an urgency ordinance could be made in this case. As staff understands the Council members’ request, this would not be a moratorium (i.e., complete prohibition) of all second story additions, but an interim modification to existing regulations to make all such additions subject to discretionary review rather than as-of-right.

An interim ordinance would allow the Planning Commission to add this item to its work program with minimum disruption of this year’s priorities and allow the Commission sufficient time to consider a range of options for addressing the concerns. It would also establish a firm deadline for final action on a permanent ordinance by the Commission and City Council.

In order to allow staff to draft the required interim amendments, as well as to ensure that the Planning Commission process is as smooth as possible, the Council needs to provide clear direction as to the following issues.

Area To Be Covered by Proposed Change

Based on the Council discussion, there seemed to be a greater concern with second story additions in the hill area where there can be significant view impacts. Should the Council wish to only address the hill area, the City already has a hill-area zoning overlay designation which contains zoning provisions that are different for that area than for similarly zoned areas in other residential parts of the City (see attached map). Because this designation already exists, it would be relatively easy to draft amendments that would apply only in the hill area overlay zone, so that whatever changes are desired only apply to that area.

Should the Council wish to adopt interim amendments that apply the proposed restriction throughout the City, that too can be accommodated through relatively straightforward modifications to the Zoning Ordinance.

500 or 700 Square Feet and Definition of a Story

Another proposed change in the Zoning Ordinance is to increase the current allowance of 499 square feet for an as-of-right addition to 699 square feet but only for first-floor additions. Staff assumes that this allowance would also be increased for “basement” additions. Staff can make no estimate as to the impact such a provision would have on development in the City. Finally, staff agrees that should the Council wish to address the issues of view and sunlight blockage, refinement of the definition of a “story” would be helpful.

CONTACT PERSON

Dan Marks, Director of Planning and Development 981-7410 or
Mark Rhoades, Manager of Land Use Planning 981-7410