



CITY COUNCIL AGENDA ITEM

To: Mayor Graham and City Council
Thru: Ted Shekell, Planning Director
Walter Denton, City Administrator
Date: September 2, 2005
Subject: Ordinance No.____: An Ordinance approving Text Amendments to the Zoning Code (**1st READING**)

List of committees that have reviewed: The Community Development Committee reviewed the petition at their August 22, 2005 meeting and recommended 3-0 to approve the changes as presented by staff and the Commission. The Committee had discussion regarding the Home Child Care. A concern is that if the Special Use Permit process for approving Home Child Care was eliminated and handled administratively that the adjoining property owners would not be notified and have an opportunity to voice their opinions, however the Committee still recommended the ordinance as proposed.

Background:

The Planning and Zoning Department is in the process of revising the Zoning Code of Ordinances. The current code has been used since its adoption in 1970. While the new zoning code is drafted, staff has noted that several elements of the new ordinance are beneficial for immediate adoption through text amendments to the current zoning code. These amendments include addressing:

- 1) The Special Use Permit process for Home Child Care
- 2) The Special Use Permit process for garage conversions for dwelling use
- 3) Adoption of 30% lot coverage in SR-3 and MH districts from the current 25% lot coverage
- 4) Protest by dissenting adjacent property owners on zoning amendments requiring a super-majority vote by City Council
- 5) Special use approval/denial by the Planning Commission

Planning Commission Update

The Planning Commission held a public hearing on the above referenced application at their Tuesday, August 9, 2005 meeting. The Commission discussed and made a recommendation on each amendment. The text in *italics* indicates the Commission's recommended revisions following discussion of the text amendments.

1) Home Child Care

The State of Illinois Department of Children and Family Services (DCFS) regulate child care services and sets specific standards on the number of children permitted, facility requirements and other items related to the operation of the home child care. Currently, a Home Child Care is subject to both Section 3.02 Home Occupations and Section 3.25 Home Child Care of the

Zoning Ordinance and must receive special use permit approval from the Zoning Board of Appeals. This process can take up to 90 days.

Section 3.25 of the City's Zoning Ordinance requires that all home day cares receive licensure from the State of Illinois. Given that home child care is strictly scrutinized on the state level and DCFS personnel make personal inspections of the property and home prior to licensure, the current Special Use process for home day care is strenuous. A set of performance standards approved administratively by City staff will be equally effective and reduce the time required of citizen commissions, City staff, and the applicants.

Recommendation: A text amendment to Section 3.25 would eliminate home child care from the Special Use Permit process and instead replace it with a set of administrative performance standards including:

“Proof of license from the State of Illinois Department of Children & Family Services. Location of home within an SR-1, SR-1B, SR-2, SR-3, MR-1, MR-2, MH-1, and MH-2 District. Any residence, which is renter-occupied, shall provide written permission from the property owner approving the use of the residence for home child care. Construction of a permanent, four foot (4’) fence around all designated outdoor play areas located on the subject property. All play equipment shall be kept in good repair. Minimum of two (2) off-street parking spaces per facility. Inspection by City staff when approved for use by state license to ensure adherence to current building codes and fire codes prior to the issuance of permit. Number of children limited to eight (8) including the family’s natural or adopted children and all other persons under the age of twelve (12). Hours of operation shall not exceed amounts permitted by the state license. When a home child care is in violation of certain covenants and restrictions adopted through a Homeowner’s Association, Board of Trustees, or other subdivision governing body, the City does not enforce or take into account private covenants when granting home child care permits. Employees are limited to only inhabitants of the residence in accordance with Section 3.02 Home Occupation provisions of this Ordinance.”

2) Garage Conversions for Dwelling Use

Currently, garage conversions for dwelling use must proceed through the same Special Use process as home child care and can take up to 90 days. A set of performance standards approved administratively by City staff will be equally effective in reviewing these conversions and will reduce the time required of citizen commissions, City staff, and the applicants.

Garage conversions for dwelling use can only occur in SR, MR, and MH zoning districts for one-family or two-family residence dwelling structures and uses and are permitted in accordance with Section 5.13 Special Use – Garage Conversion for Dwelling Use. The existing special use conditions in the zoning code for garage conversions are equivalent to performance standards.

Recommendation:

An amendment would be made to Section 2.05(d) Column C “SR-1B” and Column F “MR-1” to omit conversion of garages to dwelling areas from Special Permits (Special Uses). This change would indirectly omit conversions from SR-1, SR-2, SR-3, MH-1, and MH-2 districts as those Special Use schedules directly refer to SR-1B’s schedule. Also, Section 5.13 Special Use – Garage Conversion for Dwelling Use shall be eliminated, and Section 3.26 Garage Conversion for Dwelling Use shall be added which will include a set of administrative performance standards including: *“Inspection by City staff to ensure adherence to current building codes and fire codes prior to issuance of permit. Not less than one (1) off-street parking space per dwelling unit shall be provided and maintained.”*

3) SR-3 & MH Lot Coverage

The new ordinance is proposing an increase in lot coverage of the current SR-3 Single-Family Residence Dwelling District, the MH-1 Single-Family Mobile Home Dwelling District, and the MH-2 Single-Family Modular Residence and Immobilized Mobile Home Dwelling District from 25% lot coverage to 30% lot coverage. Currently, for a minimum size SR-3 lot and MH-1 lot of 6,000 square feet, the maximum lot coverage is 1,500 sq. ft. With this increase to 30%, the maximum lot coverage would be 1,800 sq. ft. For a minimum size MH-2 lot of 7,500 square feet, the maximum lot coverage is 1,875 sq. ft. With this increase to 30%, the maximum lot coverage would be 2,250 sq. ft.

Recommendation:

An amendment would be made to Section 2.04(e) Schedule: *Area and Bulk Regulations, Column K "Maximum Lot Coverage in Percent" for SR-3, MH-1 and MH-2 from 25% to 30%.*

4) Super-majority vote for 20% dissenting adjacent property owners

Chapter 65 of the Illinois Compiled Statutes (ILCS) establishes the procedures and organization of elections, incorporations, financial mechanisms, and other acts for municipalities within the State of Illinois. Act 5 of this chapter provides directly for the Illinois Municipal Code. Article 13, Division 13, Section 14 of Act 5 (65 ILCS 5/11-13-14) creates the procedure for the approval of ordinances which amend the regulations and districts of the municipality and is excerpted below.

Section 8.05 (Written Protest) of Article VIII (Amendments) of the City of O'Fallon Zoning Code of Ordinances contains similar language to the **bolded** portions of the excerpt but has omitted the underlined. The underlined portion should be amended to the Zoning Code to adhere with Illinois Statutes for municipalities.

Sec. 11-13-14. The regulations imposed and the districts created under the authority of this Division 13 may be amended from time to time by ordinance after the ordinance establishing them has gone into effect ...” *In case of a written protest against any proposed amendment of the regulations or districts, signed and acknowledged by the owners of 20% of the frontage proposed to be altered, or by the owners of 20% of the frontage immediately adjoining or across an alley therefrom, or by the owners of the 20% of the frontage directly opposite the frontage proposed to be altered, is filed with the clerk of the municipality, the amendment shall not be passed except by a favorable vote of two-thirds of the aldermen or trustees of the municipality then holding office. In such cases, a copy of the written protest shall be served by the protestor or protestors on the applicant for the proposed amendments and a copy upon the applicant's attorney, if any, by certified mail at the address of such applicant and attorney shown in the application for the proposed amendment.”*

Recommendation:

It is recommended that Section 8.05 (Written Protest) of Article VIII (Amendments) be amended to include the following: *“In such cases, a copy of the written protest shall be served by the protestor or protestors on the applicant for the proposed amendments and a copy upon the applicant's attorney, if any, by certified mail at the address of such applicant and attorney shown in the application for the proposed amendment.”*

5) Planning Commission Special Use Approval

A text amendment is proposed to place Special Use approval within the Planning Commission's powers. As the procedure currently exists, special uses proceed through two Planning Commission meetings (New Business and Report), one Planning Commission Sub-Committee meeting (site visit), and one Zoning Board of Appeals meeting (Public Hearing) where the special use is approved or denied. State statute does not require Special Uses to be approved specifically through boards of appeals but rather through a "commission or committee designated by the corporate authorities" (65 ILCS 5/11-13-1.1).

The statute goes on to state that when a project fails approval, the corporate authorities (City Council) may overturn the decision with a simple majority of all aldermen currently holding office. With this text amendment, City Council would maintain its 21 day power of review of Special Use decisions made by the Planning Commission as cited in Ordinance Number 2000 of the zoning code.

Special Uses are different from Variances in that a special use is permission by the municipal authority to *use* property which in a way is not ordinarily permitted in a given classification, while a variation is granting relief from specific limitations of the zoning ordinance with reference to the structure to be constructed on a given zoning lot.

Recommendation:

It is recommended that amendments be made to Article XI Special Uses – Special Permits to grant the Planning Commission the administrative power of approval of Special Uses. The City Council would maintain its 21 day power of review of Special Use decisions made by the Planning Commission as cited in Ordinance Number 2000 of the Zoning Code.

Legal Considerations, if any: None

Budget Impact: None

Staff recommendation: Staff recommends approving the text amendments as presented.