



**LDC Task Force Meeting
Friday, February 3, 2017
8:00-10:00am
City Commission Room, 200 Third Street N**

A G E N D A

1. Confirm Findings & Recommendations of White Paper
2. Discussion on Next Steps and Timeline:
 - a. City Commission Action – February 13th
 - b. Short-Term LDC Amendments – Planning Commission March 7th
 - c. Mid-Term LDC Amendments

MEMORANDUM

TO: Fargo City Commission

FROM: Nicole Crutchfield, Planning Administrator
Aaron Nelson, Planner

DATE: January 31, 2017

SUBJECT: Recommendations of LDC Residential Task Force

In 2015, in response to a large number of residential variance approvals, the Board of City Commissioners formed a task force in order to review existing residential zoning requirements and to provide a set of recommended modifications to those requirements. The attached White Paper provides an overview of the work of this task force and outlines the resulting recommendations. These recommendations have been grouped into short-, mid-, and long-term categories based on the anticipated ease of implementation for each.

Short-term recommendations involve small tweaks to specific residential dimensional standards within the Land Development Code (LDC) that would allow increased flexibility for development. These edits to the LDC could be heard by the Planning Commission for a recommendation on March 7th and then presented to the City Commission for consideration and approval in late March/early April.

Mid-term recommendations also involve modifications to residential components of the LDC; however, these changes are a bit more complex and should involve additional policy discussion before specific code edits are made to the LDC. These mid-term recommendations are interrelated to topics that go beyond the scope of review for this task force. These mid-term recommendations are briefly outlined below:

- Accessory Buildings – Possible modifications to accessory buildings (e.g. detached garages and sheds) include building height and setbacks. Allowing additional flexibility for accessory buildings likely results in an increase in livable space within these structures, such as a second story of a garage. The natural progression of allowing additional accessory living space leads

to discussions of accessory dwelling units (also known as AUDs, “granny flats,” “mother-in-law suites,” etc.), for example. Before substantially modifying existing accessory building standards, it may be worth discussing and coordinating these related policy questions.

- Setback Averaging – The LDC contains a “setback averaging” provision which is intended to help align front building setbacks along city streets. However, these setback averaging standards of the LDC are not clearly comprehensible and are therefore are not consistently applied. The setback averaging provision is not exclusive to residential zoning districts and therefore also extends beyond the purview of the task force. The merits and applicability of this provision should be further analyzed and discussed before any modifications are made.

This discussion could likely be completed by staff within one to two months. At the February 13th City Commission meeting, we seek your thoughts on these mid-term topics.

Lastly, the long-term recommendations presented within the White Paper are abstract concepts that will require policy direction and a commitment of resources in order to be advanced; they are ideas for future consideration. The two options discussed within the White Paper include 1) the creation of a “traditional neighborhood” zoning district that could be specifically applied to the City’s core neighborhoods and 2) the creation of an improved project review process that would be an alternative to the variance process. Like the mid-term recommendations, the long-term items extend beyond the scope of review for the task force and begin to overlap with other topics of discussion. For example, the Planning Commission has indicated that it may be worth exploring options for a comprehensive rewrite of the LDC, in order to better align all of the City’s zoning standards with current policies, such as those of the Go2030 Comprehensive Plan.

RECOMMENDED MOTION: Receive and file the LDC Residential Task Force White Paper. Direct Planning Department staff and the City Attorney to proceed with the short-term recommendations outlined within the White Paper.

Attachment



WHITE PAPER

Findings and recommendations of the LDC residential task force

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Abstract

In response to a large number of residential variance applications being approved by the City, the Board of City Commissioners formed a task force for the purpose of reviewing existing residential zoning requirements and to provide a set of recommended modifications to those requirements. The task force identified the primary issue as being a disconnect between the city's goals for residential development and the requirements of the Land Development Code (LDC), which results in a lengthy and prescriptive variance process which can yield unpredictable outcomes. While exploring this issue, setbacks, building coverage, and accessory building height were found to be the LDC standards which were most problematic.

While developing possible alternatives to address the specific issues identified, consideration was given to the complexity of possible recommendations and the corresponding time and resource commitment that would be necessary to effectively carry out those recommendations. Ultimately, the task force has proposed phased recommendations of short-, mid-, and long-term amendments to the LDC. Short-term recommendations are intended to be achievable within a few months and include reductions to interior-side setback standards and slight increases to maximum building coverage requirements of the SR-2 and SR-3 zoning districts, as well as moderate increases to accessory structure height and coverage requirements for all residential zoning districts. Mid-term recommendations are intended for a one- to two-year timeframe and include exploration of additional considerations for accessory building height, adding flexibility for accessory structure setbacks, and an evaluation of current setback averaging language. Lastly, long-term recommendations were proposed which were seen as being the most comprehensive way to address the issues identified. However, these long-term recommendations are beyond the task force's scope of review and are intended to be topics of consideration for future large-scale updates to the Land Development Code. One long-term recommendation is to explore the creation of a "traditional neighborhood" residential zoning district (or districts) that would be unique to the core neighborhoods of Fargo. The other long-term recommendation is to explore options for developing an improved project review process that is efficient and that also is able to consider context of design. While differing in scope and timeframe, all of these recommendations are geared towards reaching task force's vision for the city to be able to quickly and efficiently approve residential construction projects that are in line with the adopted policies and goals of the City of Fargo.

Introduction

Background

On November 24, 2014, the Fargo Board of City Commissioners directed staff to create a task force to review codes to adapt to existing and older neighborhoods, in response to a number of previous variance requests which had been appealed to the City Commission. Accordingly, on March 30, 2015, staff presented the Board of City Commissioners with a proposal to establish a task force which would consist of two city commissioners, two planning commissioners, two members of the Board of Adjustment and two members of the Historic Preservation Commission. This proposal was approved by the Board of City Commissioners and over the remainder of the year, four task force meetings were held in order to examine the issue and work towards a possible solution. A fifth and final meeting of the task force was held on February 3, 2017 in order to finalize the proposed recommendations.

Problem Statement

A variance can be described as an exception to a zoning district dimensional standard which is approved by the City on an individual basis. Among other things, to qualify for a variance a physical hardship that is unique to the property must be demonstrated. This requirement is difficult to meet and, as a result, most variance requests are not granted by the Board of Adjustment. Approximately twelve applications for a variance from the LDC dimensional standards are heard each year by the Board of Adjustment, most of which are denied. Of those denials, about half are appealed to the City Commission where the Board of Adjustment's decisions are typically overturned and the variances approved. As a matter of practice, the City Commission will often weigh other policies and factors (other than the variance review criteria) when acting on a variance appeal. This differs from the Board of Adjustment's review process, which is based strictly on the five variance review criteria defined by the Land Development Code (LDC).

In addition to the cases that are heard by the Board of Adjustment, staff members from the Inspections and Planning departments discuss variance options with approximately one potential applicant per week on average during the construction season. Only property owners willing to pay the fee and spend the time to proceed to a variance option submit an application. Of those, only applicants that have the patience and confidence decide to appeal to City Commission. As such, staff believes that there is the potential of varied results for what initially could be a similar application. As a matter of principle, staff strives for consistent application of policies and codes. Accordingly, the following two problem statements were developed by the Task Force in order to define the scope of the issues to be addressed.

Primary Problem Statement

Vision: The City would like to be able to quickly and efficiently approve residential construction projects that are in line with the adopted policies and goals of the City of Fargo.

Issue: Currently, there are many residential construction projects in core neighborhoods which are generally believed to substantially align with city policy and goals, but that cannot be quickly and efficiently approved

because they require a variance due to minor infringement of LDC dimensional standards. While these variances are generally believed to be reasonable, most must be denied by the Board of Adjustment because the review criteria cannot be met, resulting in a lengthy appeals process through the City Commission which consumes time, resources, and energy of City Commissioners, Board of Adjustment members, home owners, and city staff.

Secondary Problem Statement

Vision: The City desires that construction and redevelopment within core neighborhoods be done in a manner that is contextually consistent with surrounding properties in order to stabilize, protect, and maintain the historic and unique character of individual neighborhoods.

Issue: Within core neighborhoods, there is concern that residential buildings and additions can be constructed that could detract from the surrounding neighborhood because they are not constructed in a manner that is contextually consistent with surrounding properties. These buildings generally tend to stand out when contrasted against the existing neighborhood form, whether due to inconsistent scale, style, materials, etc. As a result, they are typically viewed by neighboring residents as having a negative effect on surrounding property values.

Process

Study Area

To determine the study area which the Task Force would focus on over the course of this process, the geographic distribution of several factors were examined, including the year of house construction, location of properties for which variances were requested, residential lot size, residential square-footage, and location of properties which have utilized community development programs or rehab funding. Ultimately, the Task Force decided to use the area between 19th Avenue N and Interstate 94 (north-south) and the area between 25th Street and the Red River (east-west) as the general study area to focus on.

Identified Issues

In reviewing historical variance records from the past twelve years, three types of variance requests were identified as being most common. Variances from setback standards made up a vast majority of the applications, followed by building coverage and then accessory building height. Of the requested setback variances, interior-side setback variances were most common. Below is a summary of some of the issues associated with each of these types of dimensional standards.

Setbacks

Setbacks are defined as, “the unobstructed, unoccupied open area between the furthestmost projection of a structure and the property line of the lot on which the structure is located.” As previously mentioned, a majority of variance requests involve the reduction of setback distances, especially interior-side setbacks. Staff suggests that these setback issues are common within the City’s older neighborhoods because most of the existing houses do not comply with current setback requirements, as they were built prior to the adoption of the current zoning code. While traditional urban neighborhoods were developed with houses on smaller lots spaced closely together, the City’s current zoning code is more apt for a suburban style of neighborhood development. In addition, staff suggests that changes in market demand for residential houses have also contributed to the issue. There is an increased demand by homeowners for more living space and additional garage stalls compared to when most of the City’s traditional neighborhoods were developed. Consequently, it is common for homeowners in these older neighborhoods to construct additions onto existing homes or to add or replace older garages with larger ones.

Additionally, current setback requirements can vary among properties depending upon other factors, such as zoning district and/or lot width. There is a wide variety of setback standards among the City’s Single-Dwelling Residential zoning districts (SR-0 to SR-5). Interior-side setbacks, for example, can range from 4 feet to 10 feet. In addition, many of the interior-side setback requirements are determined by the lot’s width. In many cases, this can result in two different interior-side setback requirements for abutting properties, even if neighboring property owners agree to a reduced interior-side setback. Another factor that can affect a property’s setbacks is the provision in the LDC for “setback averaging,” which is presumably intended to create a unified front setback along individual blocks. Unfortunately, this setback averaging provision is not clearly written and is a challenge to administer.

Building Coverage

Building coverage is defined as, “the area of a lot covered by buildings (principal & accessory) or roofed areas.” Similar to setbacks, staff suggests that building coverage issues also result from modern market demands for more space and larger garages in older neighborhoods which have traditionally smaller lots. For example, a 900 square-foot house with a 600 square-foot garage on a 4,000 square-foot lot would exceed the maximum building coverage for the SR-3 zoning district and would therefore not be allowed to expand without approval of a variance.

The LDC also restricts accessory structures from having more building coverage than the primary structure. This creates issues for property owners with small houses who would like additional garage space. It should be noted that attached garages are considered part of the primary structure and are therefore not subject to this restriction.

Building Height

Building height is defined as, “the vertical distance between the average finished grade at the base of the building along the side of the building being measured and: 1) the average height level between the eaves and ridge line of a gable, hip or gambrel roof; 2) the highest point of a mansard roof; or 3) the highest point of the coping of a flat roof.” Most requests for variances of building height maximums are for accessory structures. With a few exceptions, accessory buildings are restricted to a maximum of 15 feet in Single-Dwelling Residential (SR) zoning districts. Although accessory structures are subject to relaxed setbacks when located in the rear yard area, accessory structures are still limited to a maximum height of 15 feet when located within the standard setbacks of the primary structure. This restriction causes issues for property owners who wish to build a taller detached garage, either to store a larger vehicle or to build a second story “bonus room.” Currently, property owners are able to build taller accessory structures by utilizing a gambrel (barn-style) or A-frame roof with low hanging eaves. Although these types of accessory structures meet the letter of the law, this is generally seen as somewhat of a loop-hole which does not meet the intent of the law.

Other Issues

In addition to the dimensional standards outlined above, several other topics were identified by task force members as being potential issues, such as the potential for accessory dwelling units (also referred to as “granny flats”), exemptions for front porches, the context/compatibility of design for variance requests, and the establishment of “build-to” lines as opposed to setbacks. Currently, the LDC is silent on allowing additional dwelling units that are accessory to single-family house; uncovered porches may encroach into required setback areas, but covered porches must comply with setbacks; the design of a building is not a variance review criterion; and build-to lines are not currently required. Although these potential issues are related to residential development in the City’s core neighborhoods, most of these were found to be beyond the scope of analysis for this task force.

Development of Alternatives

Once the primary issues were identified, the task force began to formulate and discuss possible solutions. The possible solution alternatives range in scale from small tweaks to some of the dimensional standards on the simple end, to the development of new processes on the more-complex end. Several examples of possible alternatives are detailed below:

Amended dimensional standards

One option was to simply amend the dimensional standards in order to reduce the requirements for things such as minimum setbacks, maximum height, and maximum building coverage. These types of amendments could be tailored to individual zoning districts. However, amendments made to existing zoning districts would apply within those zoning districts throughout the City, and not just within the study area.

Creation of new zoning district

Creating one or more new residential zoning district(s) is an alternative option to amending the dimensional standards of existing zoning districts. In reviewing other municipalities' zoning codes, several examples of "traditional residential" zoning districts were found. In other cities, these traditional residential zoning districts are applied exclusively to historic/older neighborhoods and allow for a more-traditional pattern of development compared to suburban or newer patterns of development.

Creation of an administrative waiver process

An alternative to amending any of the LDC dimensional standards would be to create a new process to allow deviation from the zoning district dimensional standards of the LDC. Currently, there are a couple of different types of zoning standards that may be modified via an administratively reviewed waiver process, such as *residential protection standards* and *off-street parking standards*. In both cases, the decision of the zoning administrator may be appealed to the Planning Commission, and ultimately to the City Commission. By creating a similar waiver process for deviations from the LDC dimensional standards, unique criteria or requirements could be established in order to compel a higher standard of design whenever a dimensional waiver is granted. A waiver process may allow an opportunity to integrate design considerations (such as context, character, and/or compatibility of design) into the review process. For example, if a waiver were to be granted to allow a taller detached structure, maybe a specific roof type/pitch would be required along with additional setback distances and landscaping.

Amendment of the variance approval criteria

Similar to creating a waiver process, amending the variance approval criteria is another option. Currently, the variance review criteria are somewhat restrictive due to the fact that before a variance may be granted, it must be found that a physical hardship exists which is unique to the property and that prevents the normal use of the property. The variance review criteria could be amended to reduce the degree to which a hardship needs to be shown. This option is limited, however, due to variance requirements that are outlined within the North Dakota Century Code. Although the City of Fargo's variance criteria expand upon the State requirements, the showing of an unnecessary hardship would still be required for the granting of a variance per the Century Code.

No action

A final alternative would be to take no action. When making a determination on the best course of action, it is often helpful to compare alternatives to a “no action” alternative. A no action alternative can be used as a benchmark when considering the pros and cons of each of the alternative options.

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Recommendations

In considering the possible alternative options, the degree of change and the corresponding time commitment that would be required of staff were important factors. With the City's continuous rate of growth, staff and commissioners are currently having to juggle many competing priorities. Accordingly, the task force and staff from the Department of Planning & Development have developed multiple recommendations ranging from short-term to long-term. Short-term recommendations include minor edits to the LDC text that should alleviate some of the problem. Mid-term recommendations also represent minor edits to the LDC text; however, these proposed edits could be expanded upon to address related issues. These recommendations are listed as mid-term since additional policy discussion should be had in order to identify the scope of such edits and to work through the details of the ordinance language itself. It is anticipated that mid-term recommendations could be addressed within the next one or two years. Lastly, long-term alternatives involve the creation of new processes and zoning districts through larger revisions to the LDC. The short-term recommendations have been specifically defined, whereas the mid- and long-term recommendations are abstract and would require additional analysis and direction from city leadership.

Short-Term Recommendations

There are several simple edits that could be made to some of the zoning district dimensional standards which could allow for a limited increase in the intensity of development within single-family zoning districts, and thereby alleviate some of the demand for variances. The task force recommends edits to the interior-side setback and building coverage requirements of the SR-2 and SR-3 zoning districts, as well as edits to the accessory structure height and coverage requirements for all residential zoning districts. Each of these four recommended changes are outlined below.

Interior-Side Setback

Currently, the SR-2 and SR-3 zoning districts require an interior-side setback of 10% of the lot's width or 10 feet, whichever is less. The task force recommendation is to reduce this requirement to 10% of the lot's width or 5 feet, whichever is less. This amendment would have no effect on properties which are less than 50 feet wide since, in those cases, the 10% would be less. For lots wider than 50 feet, however, this proposed amendment would allow a reduced setback. For these lots, the reduced setback will allow for a larger building envelop with more room for expansion. A smaller setback is also more consistent with traditional neighborhoods.

Building Coverage

Currently, the SR-2 and SR-3 zoning districts restrict building coverage to a maximum of 30% and 35% of the lot area, respectively. The task force recommends increasing both of these maximums by 5% in order to allow additional opportunity for limited expansion within these zoning districts. Increased building coverage on single-family lots is more typical of traditional urban neighborhoods.

Accessory Building Coverage

Currently, building coverage of detached accessory structures may not exceed that of the principal building, with some exceptions. The task force recommends allowing accessory structure building coverage of up to 700 square feet regardless of the building coverage of the primary structure, in order to allow at least a two-stall garage for houses that have a building coverage of less than 700 square feet. To this end, the task force recommends that the LDC be amended to so that building coverage of detached accessory structures may not exceed that of the principal building or 700 square feet, whichever is greater.

Accessory Building Height

Currently, accessory structures in SR-1 through SR-5 zoning districts are restricted to a maximum height of 15 feet. In the short term, staff recommends allowing a two-foot increase to the maximum accessory structure height from 15 feet to 17 feet in order to accommodate the wall height needed for larger 8-foot-tall residential garage doors.

Mid-Term Recommendations

There are additional fairly-quick edits that could be made to the Land Development Code in order to alleviate some of the demand for variances. These recommendations are based on discussion had by the task force, but that are related to topics that are outside of the scope of this task force and/or require additional input and direction from City leadership. It is the intent of the Task Force that if the City Commission wishes to pursue some or all of these mid-term recommendations, that additional direction be given to either the Task Force or City staff to further evaluate and define these recommendations.

Accessory Building Height

In addition to allowing a slight increase to the maximum accessory building height in the short-term, the task force also recommends that a more-comprehensive review of accessory structures be conducted in the mid-term. Considerations should be made for the overall height or number of stories for accessory structures. Many variances are requested for the purpose of constructing usable space in the second story of an accessory garage. However, two-story accessory buildings could have the potential to dominate the surrounding area, especially in neighborhoods predominated by single-story houses. One possible way to address overly tall accessory structures would be to restrict the ridge line of a gable, hip, or gambrel roof to an overall maximum of 20 feet in height. The intent of creating a maximum ridge line height is to close (or shrink) the loop-hole which allows two-story accessory structures built with low-hanging eaves. For example, today, if the eaves of the roof extend to the ground, the ridge line could be constructed to 30 feet in height.

Accessory structures also provide opportunity for additional intensity and density within the developed and serviced areas of the City, which is in line with some of the goals of the Go2030 Comprehensive Plan. Accessory dwelling units (also known as ADUs or “granny flats”) are becoming increasingly common across the nation. While reviewing accessory building height requirements, staff recommends also having a deeper policy discussion on the potential opportunities and benefits that accessory structures could provide.

Accessory Structure Setbacks

In addition to height, it is also recommended that consideration also be given to allowing flexibility for accessory structure setbacks. One option may be to create an administrative review process similar to the LDC's current process for administrative review of minor parking reductions. This option would involve 1) staff review of a proposed deviation from the accessory structure setback requirements within a set of defined parameters or criteria, 2) notification and appeal opportunity for neighboring property owners, and 3) a defined process for the Planning Commission or Board of Adjustment to review appeals of staff's decisions.

Setback Averaging

As referenced in the *Identified Issues* section of this report, the LDC currently includes a provision for "setback averaging" which is not clearly written and is therefore tough to administer. It is staff's recommendation that the merits of having such a provision be evaluated for possible removal from the LDC. If, however, it is found that such a provision is needed, staff recommends that the requirements be simplified and rewritten to improve the understanding of such requirements and to improve the consistency of administration of requirements.

Long-Term Recommendations

It was generally recognized by the task force that a more comprehensive update to the Land Development Code would be necessary in order to most properly align the City's goals (as expressed by the City Commission and as outlined in the Go2030 Comprehensive Plan) with zoning and development requirements. However, because a comprehensive rewrite of the Land Development Code is outside of the scope identified for this task force, staff has drafted several long-term recommendations that are related to residential development, specifically within the City's older neighborhoods.

Creation of traditional neighborhood residential zoning district

Staff's first long-term recommendation is to create a traditional neighborhood residential zoning district (or districts) that would allow for the customization of dimensional standards in traditional neighborhoods. The purpose of such a zoning district would be to encourage and allow residential development that would be consistent with the dimensions and intensity of traditional neighborhoods, but that also respects the design and character of such historic places. While the task force's primary objective was to analyze the current dimensional standards as they relate to older residential areas, there was also clear desire for there to be sensitivity towards the character of these established neighborhoods. This concern regarding design and character is reflected in the task force's adoption of the secondary problem statement. Staff suggests that some of the components and lessons learned from the City's current Historic Overlay zoning districts could be uniformly applied to such a traditional neighborhood residential zoning district.

Creation of an improved review process

Even with the adoption of all other recommendations presented, there will still undoubtedly be situations where deviation from the zoning standards is requested. Based on the visions presented in the task force's primary and secondary problem statements, it is desirable for there to be an improved

review process which is quick and efficient while also integrating context of design into the review process. Such a review process could take a variety of forms, whether it would involve special permitting, zoning map amendment, administrative review, etc. Regardless of the form such a process would take, it is staff's recommendation that the process should somehow encourage quality design. The task force recognized that context and design play a key factor in how a building project or redevelopment is perceived to impact a neighborhood.

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