



NOTICE OF PUBLIC HEARING

CITY OF ALBANY
PLANNING COMMISSION
City Council Chambers, 333 Broadalbin Street SW
Monday, June 21, 2010
5:15 p.m.

AGENDA

1. CALL TO ORDER

(Chair Faller)

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. ROLL CALL

4. PUBLIC REQUEST

Property owner request that the PC initiate a review of ADC Articles 3, 4, and 5 regarding electric fences.

The PC shall review the proposal and determine whether it warrants processing as a legislative amendment.

5. LEGISLATIVE PUBLIC HEARING (Memo, Staff Report, and Exhibits).

DC-03-10: Legislative amendments to the following Development Code Article 2.

6. ACTIVITY UPDATE

7. NEXT PLANNING COMMISSION MEETING DATES:

- a. Monday, June 28, 2010 Planning Commission
- b. Monday, July 19, 2010 Planning Commission Retreat & Public Hearing

8. ADJOURN

Rules of Conduct for Public Hearing

1. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
2. Persons shall not testify without first receiving recognition from the presiding officer and stating their full name and residence address.
3. No person shall present irrelevant, immaterial, or repetitious testimony or evidence.
4. There shall be no audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive of the hearing.

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The location of the meeting/hearing is accessible to the disabled. If you need special accommodations to attend or participate, please notify the Human Resources Department in advance by calling 541-917-7500.

City of Albany Web site: www.cityofalbany.net



TO: Albany Planning Commission

VIA: Greg Byrne, Community Development Director *HHA for Greg*
Heather Hansen, Planning Manager *HAC*

FROM: Janet Morris, Planning Staff *jm*

DATE: June 11, 2010, for June 21, 2010, meeting

SUBJECT: Request to allow filing of a legislative amendment to the text of Development Code.

Action Requested:

Review a proposal by a property owner to amend the text of the Development Code regarding regulations on electric fences and determine whether it warrants processing as a legislative amendment.

Discussion:

The following section of the Development Code (ADC 1.580) outlines the process to initiate a legislative amendment the Comprehensive Plan or Development Code:

- (1) The City Council may make changes in the Comprehensive Plan or Development Code provisions and designations by legislative act where such changes affect a large number of persons, properties, or situations and are applied over a large area.
- (2) The City Council, Planning Commission, Landmarks Advisory Commission, or Community Development Director may initiate a review on any legislative matter.
- (3) Any property owner or resident of the City may request that the Planning Commission initiate a review of any legislative matter (such as an amendment to the Development Code text). The Planning Commission shall review the proposal and determine whether the proposal warrants processing as a legislative amendment.

Staff periodically initiates "bundles" of amendments to the land use documents. Most of the amendments have been staff-generated in response to changes in the law, direction of the Council, or the need to make it easier to understand. Occasionally an amendment suggested by a property owner has been included in a staff "bundle" because the Planning Division determined it warranted review.

The Community Development Director has declined to initiate the proposed amendment so the property owner, through his representative, has requested that the Planning Commission review the proposal to determine if it warrants processing.

Budget Impact:

No budget impact in allowing the application to be filed.

Attachments: Request letter; current regulations on electric fences

jm/sd

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June 10, 2010

Janet Morris, Planner
City of Albany,

Dear Janet,

I would like to request that the Planning Commission consider amending the Albany Development Code to allow the use of electric security fences.

The Code, as it is written, has been interpreted by the City Staff that the use of electric security fences is prohibited. For the sake of clarity, the safety and protection of the citizenry, and the safety and protection of businesses located in Albany, I would request the Code be amended to permit the use of electric security fences (ESFs).

Electric fences have been in use in the US since 1939 when UL developed standards for livestock containment using electrically charged wires powered by DC current that is pulsed every second or so. This pulsing current is the base technology for ESFs and ultimately what makes them so safe and effective. Many data bases have been maintained to document any injury or death associated with the use of these devices. OSHA, UL, and the IEC, maintain data bases. These internationally recognized organizations have never recorded a death or serious injury. To put it simply, the safety record of these devices is unparalleled.

Many cities in Oregon permit the use of ESFs, Portland, Eugene, Troutdale, and Madras to name a few. Most cities require simple building permits or burglar alarm permits for the installation of the systems.

The aesthetics of the system are superior to that of barbed wire or razor wire, in most instances the only visible indication of the location of an electric security fence is the required signage.

ESFs are the only security apparatus that actually prevent crime, enabling police resources to be marshaled to other areas. In a time of tight budgets, a private/public partnership is a prudent use of resources. Installation of ESFs is commonly restricted to non-residential areas.

Fire access is simple with the installation of a KNOX BOX style system. There is no impediment to access to any property.

In short, the amendment to allow the use of electric security fences is compatible with the goals of the city of Albany, providing an effective crime deterrent, is aesthetically pleasing, and offers the business owners of the city another alternative to crime deterrence and the protection of their property and people.

Regards,

Michael Pate
The Electric Guard Dog
Representing Wayne Forslund/ Forslund Construction

Current Fence Regulations

Residential Zoning Districts - ADC 3.400 and Mixed Use Districts MUR and MUC (ADC 5.380)

Materials. Fences and walls shall not be constructed of or contain any material which will do bodily harm, such as barbed wire, broken glass, spikes, or any other hazardous or dangerous materials. *Electric and barbed wire fences are not permitted except those intended to contain or restrict cattle, sheep, horses or other livestock, and existing prior to annexation to the City may remain.* (Italics added) [Ord. 5446, 5/10/2000]

Commercial/Industrial Zoning Districts – ADC 4.310

Materials. Fences and walls shall not be constructed of or contain any material which will do bodily harm, such as electric or barbed wire, broken glass, spikes, or any other hazardous or dangerous materials, except as follows: (Italics added)

- (1) Barbed wire is permitted atop a 6-foot tall chain link fence. The total height of the fence and barbed wire is limited to 8 feet. Barbed-wire-only fences and concertina wire are prohibited except as allowed in subsection (2).

Concertina wire may be used around correctional institutions and high security areas provided that the fences are posted at least at 15-foot intervals with clearly visible warnings of the hazard.

- (a) Except as specified in the provisions of subsections (1) and (2) above, concertina wire, barbed wire, or upturned barbed selvage existing at the time of the passage of this ordinance that is between six and seven feet above grade in the commercial districts shall be considered a legal non-conforming use, provided that the barbed wire or upturned barbed selvage does not extend over a street or alley and where it does slant toward the public right-of-way, it is located not less than one foot from said right-of-way.

Fences are limited to the height and location standards listed below:

- (a) Fences may be up to 8 feet tall provided that the fence is located behind the required front yard setback and outside of any vision clearance area.
Fences more than 6 feet tall require building permits.

Wherever a sight-obscuring fence, wall or hedge is required under the provisions of this Code, it must meet the following provisions:

- (a) Opacity. In order to be “sight-obscuring,” fences and walls will be at least 75 percent opaque when viewed from any angle at a point 25 feet away from the fence or wall. Hedges will be of an evergreen species that will meet and maintain year-round the same standard within three (3) years of planting.

Height. Fences and walls will be a minimum of six feet tall. Hedges will be of a species capable of attaining a height of at least 6 feet within 3 years of planting, given their age, height and health when planted.

Maintenance. Fences and walls will be maintained in safe condition and opacity is maintained as required in subsection (a) of this section. Wooden materials will be protected from rot, decay, and insect infestation. Plants forming hedges will be replaced within six months after dying or becoming diseased to the point that the opacity required in subsection (a) of this section is not met.

Mixed Use Zoning Districts – HD, CB, MS, LE, TD, PB, ES, WF (ADC 5.400)

Materials. Fences and walls shall not be constructed of or contain any material which will do bodily harm, *such as electric* or barbed wire, broken glass, spikes, or any other hazardous or dangerous materials, except as follows: *(Italics added)*

- (1) Barbed wire is permitted atop a 6-foot tall chain link fence. The total height of the fence and barbed wire is limited to 8 feet. Barbed-wire-only fences and concertina wire are prohibited except as allowed in subsection (2).
- (2) Concertina wire may be used atop a 6-foot chain link fence around correctional institutions and high security areas provided that the fences are posted at least at 15-foot intervals with clearly visible warnings of the hazard.
 - (a) Except as specified in the provisions of subsections (1) and (2) above, concertina wire, barbed wire, or upturned barbed selvage existing at the time of the passage of this ordinance that is between six and seven feet above grade in the commercial districts shall be considered a legal non-conforming use, provided that the barbed wire or upturned barbed selvage does not extend over a street or alley and where it does slant toward the public right-of-way, it is located not less than one foot from said right-of-way.

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TO: Planning Commission
VIA Greg Byrne, Community Development Director *MTA for Greg*
Heather Hansen, Planning Manager *HAM*
FROM: Anne Catlin, Planner II
DATE: June 11, 2010, for the June 21, 2010, Planning Commission Meeting
SUBJECT: ADC Amendments (File DC-03-10)

Background

Immediately following the May 24, 2010, public hearing on the current Development Code amendment package, Bob Alexander of Red Hat Construction requested an encroachment of up to 3 feet into the required interior setback to enable bathrooms to be retrofitted to accommodate persons with mobility impairments. Persons in wheel chairs or in walkers who want to stay in their homes are challenged with traditional bathrooms. A “wheel-in” shower is an option that accommodates their safety and health challenges.

The Code currently allows bay windows, porches and chimneys to encroach up to 2 feet into the side yard setbacks [See Section 3.260(2) in Article 3]. But in some cases, according to Bob Alexander, 2 feet would not be adequate to accommodate the bathroom retrofit, so a 3-foot encroachment was requested. The main concern from Planning is that there is still a 3-foot setback remaining after the encroachment to ensure that the impact on the neighboring property is minimal, and to allow fire and life safety access.

Staff proposes that a request to retrofit an existing bathroom that needs to encroach into the side setback be considered through the Adjustment process. An application would be required and would include current and proposed floor plans and documentation by a physician of the physical limitations. The proposed language is attached in Exhibit A.

Action Requested

Consider adding this amendment to the package of amendments (Planning File DC-03-10) that you recommended to the Council for approval at the May 24 hearing.

As always, we are happy to answer any questions about the proposed amendments prior to the meeting, anne.catlin@cityofalbany.net or heather.hansen@cityofalbany.net, 541-917-7550.

alc/smd

Attachment

c: Greg Byrne, Community Development Director
Heather Hansen, Planning Manager

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Community Development Department

333 Broadalbin Street SW, P.O. Box 490
Albany, OR 97321

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STAFF REPORT Development Code Amendments

<u>HEARING BODY</u>	PLANNING COMMISSION	CITY COUNCIL
<u>HEARING DATE</u>	Monday, June 21, 2010	Wednesday, July 14, 2010
<u>HEARING TIME</u>	5:15 p.m.	7:15 p.m.
<u>HEARING LOCATION</u>	Council Chambers, Albany City Hall, 333 Broadalbin Street SW	

GENERAL INFORMATION

DATE OF REPORT:	June 11, 2010
FILE:	DC-03-10
TYPE OF APPLICATION:	Legislative amendments to the following Development Code Article: Article 2, Review Criteria (Exhibit A): <ul style="list-style-type: none"> • Adjustments, Section 2.080. Add criteria to allow for an encroachment into the interior setback to retrofit bathrooms to accommodate mobility impairments.
REVIEW BODY:	Planning Staff
APPLICANT:	City of Albany, Planning Division
APPLICANT REP:	Planning Staff
ADDRESS/LOCATION:	Not Applicable

BACKGROUND INFORMATION

The Albany Development Code (ADC) allows for the public to request legislative amendments and for the Community Development Director to initiate legislative amendments. The City has implemented a process to periodically evaluate and adopt changes to the ADC – to include both clarifying and policy edits. This staff report focuses on a request we recently received to allow bathrooms that need to be retrofitted to accommodate persons with mobility impairments to encroach into the interior setbacks up to a maximum of 3 feet, as long as a 3-foot setback is retained. If recommended for adoption, it would be added on to the DC-03-10 package.

EXHIBITS

The proposed amendments to Article 2, Review Criteria are shown in Exhibit A of the staff report.

NOTICE INFORMATION

A notice of public hearing was mailed June 11, 2010, to persons interested in Development Code amendments and believed to have a particular interest in this package of amendments. A notice of public hearing was published in the *Albany Democrat Herald* June 14, 2010. The Development Code amendments were posted on the City's Web site.

At the time this staff report was completed, no written testimony had been received.

STAFF RECOMMENDATION

RECOMMEND that the City Council APPROVE the proposed Development Code amendments.

PLANNING COMMISSION DECISION

MOTION TO RECOMMEND APPROVAL

If no new evidence is presented at the public hearing, the Planning Commission may recommend City Council approval of the application based on the findings and conclusions of the staff report.

I MOVE that the Planning Commission recommend that the City Council APPROVE the proposed Development Code amendments as summarized in the staff report (File DC-03-10). This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing.

OR

MOTION TO APPROVE AS MODIFIED

If there is information not included in the staff report or new information is presented at the public hearing, the Planning Commission may propose new findings and conditions or modify the proposed conditions.

I MOVE that the Planning Commission recommend that the City Council APPROVE AS MODIFIED (*Insert modification(s) here*) the proposed Development Code amendments as summarized in the staff report (File DC-03-10). This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing.

APPEALS

If the Planning Commission decision is to recommend that the City Council approve the proposed Development Code amendments, the City Council will hold a public hearing on the amendments. A City Council decision can be appealed to the Oregon Land Use Board of Appeals by filing a Notice of Intent to Appeal within 21 days of the Council decision.

STAFF ANALYSIS

Development Code Amendment File DC-03-10

The Albany Development Code (ADC) contains the following review criteria that must be met for this Development Code amendment to be approved. Code criteria are written in *bold italics* and are followed by the Proposed Amendments, Findings and Conclusions.

- (1) *The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.*

FINDINGS OF FACT

- 1.1 The following Comprehensive Plan goals and policies support the proposal to allow an encroachment up to 3 feet into interior setbacks to retrofit existing residential bathrooms to accommodate mobility impairments.

Goal 10 Housing, Goal: Provide a variety of development and program opportunities that meet the housing needs of all Albany's citizens.

Goal 10 Housing, Goal: Create a city of diverse neighborhoods where residents can find and afford the values they seek.

Goal 10 Housing, Policy: Encourage innovation in housing types, densities, lot sizes and design to promote housing alternatives. Examples include: Other actions directed at reducing housing costs which conform to the Comprehensive Plan, including innovative Development Code regulations.

Goal 10 Housing, Policy: Recognize groups needing specialized housing such as the elderly, handicapped, homeless, and other disadvantaged groups when identifying housing programs and opportunities.

Goal 14, Urbanization, Development Review: Encourage design innovation but ensure the site design considers site characteristics, potential impacts on surrounding areas, and applicable Comprehensive Plan policies.

- 1.2 Allowing bathrooms to be retrofitted to accommodate walk or roll-in showers and room for wheelchairs is an innovative way to be inclusive and make exceptions to the setbacks for a good reason.
- 1.3 Retrofitting a bathroom for mobility impairments may help residents stay in their homes and neighborhoods without having to move to find a house that is or can be modified without encroaching into the setback.
- 1.4 The proposal to allow an adjustment to the interior setbacks will allow residents to live more affordably and possibly delay more expensive care.
- 1.5 Processing these requests through the adjustment process will allow for case by case evaluation of the circumstances and challenges of the site and floor plans.
- 1.6 The proposed Code amendments will help meet housing needs for all of Albany's residents.

(2) The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.

The applicable Development Code policies and purposes are identified in *italic* type.

FINDINGS OF FACT

(1) Serve as the principal vehicle for implementation of the City's Comprehensive Plan in a manner that protects the health, safety, and welfare of the citizens of Albany.

- 2.1 The proposed amendments to allow adjustments to the interior setbacks would help protect the health, safety and welfare of Albany's citizens faced with mobility impairments.
- 2.2 The proposed amendments better achieve the goals and policies of the Comprehensive Plan as identified in findings under criterion 1.

(3) Facilitate prompt review of development proposals and the application of clear and specific standards.

- 2.3 Most proposed language provides specific standards that must be met in order to allow encroachment into the interior setbacks to accommodate mobility impairments.
- 2.4 Processing setback encroachment requests through the adjustment process will allow timely review of proposals.

CONCLUSIONS

- 2.1 The proposed Development Code amendments are consistent with the purposes of the Code.
- 2.2 This criterion is satisfied.

ARTICLE 2 REVIEW CRITERIA

Staff Comments: Only the additional amendments to this article are included in this document.

ADJUSTMENTS

- 2.060 Purpose. The adjustment review allows the Director to make limited modifications to the application of Development Code regulations. Adjustment reviews provide very limited flexibility from numeric standards for unusual situations, while still providing certainty and rapid processing for land use applications. Adjustments will not be considered to avoid a review process or standard in this Code. [Ord. 5720, 08/12/2009]

Alternative setbacks in developed areas are addressed in Sections 3.240, 4.130, and 5.130.

- 2.070 Procedures. Adjustment applications are processed through a Type I procedure. Variances are processed through a Type II procedure (Sections 2.660-2.690). The Director will determine whether an application is processed as an adjustment or a variance. [Ord. 5720, 08/12/2009]

Staff Comments: The proposed amendments would allow bathrooms to be retrofitted to accommodate persons with mobility impairments to encroach up to a 3-foot into the required side setback, with restrictions through the Adjustment review process.

Persons who use wheelchairs or walkers who want to stay in their homes are challenged with traditional bathrooms. A "wheel-in" or "walk in" shower is an option that accommodates their safety and health challenges. The Code currently allows bay windows, porches and chimneys to encroach up to 2 feet into the side yard setbacks. [See Section 3.260(2) in Article 3.]

- 2.080 Review Criteria. The applicant must show that the following criteria have been met:

- (1) The adjustment is not requested to avoid a land use review process or increase density.
- (2) The need for the adjustment is created by the unusual configuration of the property, to protect natural features, or due to the location of an existing or proposed structure on the site; **OR** [Ord. 5338, 1/28/1998]
- (3) **The need for the adjustment is for an encroachment into the interior setback for the purpose of retrofitting an existing residential bathroom to accommodate mobility impairments. The property owner must provide information to show the following criteria are met:**
 - (a) **The existing bathroom does not have sufficient space for a retrofit to accommodate persons with mobility impairments; and**
 - (b) **A written medical report from a licensed physician that documents a person residing in the dwelling has a mobility impairment; and**
 - (c) **The adjustment is to expand the bathroom no more than 3 feet into an interior setback; and**
 - (2)(d) **A minimum of a 3-foot interior setback is retained adjacent to the expansion.**
- (3)(4) The adjustment is the minimum necessary to address the unusual circumstance and still be consistent with the purpose of the zoning district.

[Ord. 5720, 08/12/09]

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