

**Attachment B: Excerpt of the Minutes of the Board of Zoning
Adjustments meeting of January 5, 2012**

Item 8A: Miscellaneous

A. Consideration of Amendments to the City of San Leandro Zoning Code related to Large Family Day Care, Accessory Structures, Fences in the Residential Single-Family View Preservation Overlay District, and Paving in Residential Front Yards in Residential Districts. (Barros)

Senior Planner Barros explained that the subject items have been on the list of Zoning Code cleanup items for some time, and she's tried to group together items that have something in common – in this case, residential districts. Proposed amendments involve four items:

1) Large Family Daycare: State regulations allow residentially based providers who care for up to six children to be permitted by right without further regulation by local jurisdictions. With facilities that serve from seven to 14 children, cities can exercise discretionary approvals and impose regulations and assess impacts of the operation on the neighborhood. Senior Planner Barros said situations have arisen in which a daycare operator's home didn't have sufficient frontage to provide the 32-foot minimum requirement (basically to accommodate two vehicles) for on-street parking.

The proposal is to use an administrative review by the Zoning Enforcement Official for providers who don't meet the criteria rather than imposing the burdensome process of applying for a CUP. As with CUPs, Senior Planner Barros explained, the Administrative Exception process enables the City to impose conditions of approval.

2) Accessory Structures: Senior Planner Barros said she's distilled the language related to the maximum height and minimum setbacks for accessory structures (in RS, RD and RM Districts) into an easier-to-follow table that also clarifies language that seemed inconsistent and that strikes out language that was contradictory between the height and location parameters for setbacks.

<i>Maximum Height</i>	<i>Minimum Setback</i>
Up to 8 feet	zero
8+ feet to 12 feet	3 feet
12+ feet to 15 feet	5 feet

Chair Daly asked whether his understanding is correct that accessory structures built on the property line cannot exceed 120 square feet. Senior Planner Barros explained that current code allows structures of less than 120 square feet in area and less than eight feet in height to be closer to the property line than 5 feet. However, in the rear 25 feet of a lot, an accessory structure exceeding 120 square feet (10x20 feet) can be up to three feet from the property line.

In response to Chair Daly's question about whether the proposed changes would remove the square footage limitation on accessory structures, Senior Planner Barros confirmed that understanding. She explained that the area of an accessory structure is measured from the outer four walls and does not include eaves. The height as defined in the Zoning Code is an average from the ridge of the roof to the wall plate, so the ridge actually may exceed eight feet. Chair Daly noted that residential fencing is limited to seven feet in height.

Chair Daly further pointed out that he'd learned from experience that property lines in San Leandro tend not to be very specifically defined, and it's not uncommon for a fence to be built as much as six inches away from the property line. Although fences are relatively easy to move, he said, structures are not. Accordingly, he said that he believes it would be prudent to require setbacks for any structure of a permanent nature, even if it's only 18 inches – not only as a safeguard against encroachment but also because of drainage issues. An individual could spend thousands of dollars converting a yard to a garden spot, and then have a neighbor install a large accessory structure up against the fence. The City doesn't have a surveyor and isn't equipped to adjudicate property line issues, he stated, and doing so in court is extremely expensive and stressful. Chair Daly also pointed out that if adjacent property owners wanted to install accessory structures back-to-back against a common property line, that would create problems not only with drainage but also with impacts of storage contents and building maintenance. Chair Daly strongly recommended a setback of 18 inches for any structure.

Senior Planner Barros said the proposed amendments are designed to clarify current policy and practice and clean up contradictions in the current language. Increasing the setback requirement would mean establishing new policy, she said, which would require discussions with homeowners' associations throughout the City. As a compromise, she suggested adding an area notation into the table.

Chair Daly said that would clarify existing policy and be the very minimum. It's also ironic, he pointed out, that a neighbor who doesn't want to look at an accessory structure in the yard next door can only build a seven-foot fence. The result is a potential decline in property value for the neighbor without significantly increasing the value of the adjacent property with the accessory structure.

Member Mendieta said that he could understand Chair Daly's issues with having accessory structures abutting property lines, particularly with the issues of drainage and eaves encroaching on neighbor's airspace and asked how issues such as these are dealt with during permitting. Senior Planner Barros explained that California Civil Code does not allow discharge of any type onto another's property, whether it be leaves or water, but it isn't appropriate to assume that accessory structures built on property lines necessarily create drainage issues. In the North Area, for example, she said that 80% of the homes have their garages right on the property lines. Planner Barros related that City staff experience at the permit counter has shown that in many cases, property owners come in for permits to replace garages that were built on the property line. If owners wish to rebuild in order to more efficiently utilize the rear yard, the Zoning Code requires a five-foot setback; this in turn forces them to lose yard space and shift the driveway over creating more impervious surface in the rear yard. That is a reason why

staff is seeking to reduce the setback requirement for garages. Chair Daly said that the property line encroachment issue does not apply to most of the garages in the North Area, because they were built by the developer on clearly defined lot lines.

Chair Daly also pointed out because accessory structures smaller than 120 square feet require no building permits, the City has no input regarding those structures and no building inspector reviews them. He suggested that perhaps a permit should be required for any accessory structures built on the property line. Planner Barros explained that it is the San Leandro Building Code, rather than the Zoning Code, which allows accessory structures less than 120 square feet to be built without permits. She pointed out that homeowners who do come in to inquire about permits are asked to file a site plan that records the placement of the accessory structure; at that juncture staff would be able to review drainage and materials issues.

Member Makin said that most people don't build these accessory structures – they buy them from Home Depot or Lowe's or companies that manufacture sheds and drop them onto the property. He said that he'd hesitate getting the City to be more onerous for those, or to get involved in those minutiae.

Member Makin also asked about how grandfathering is determined. In response, Senior Planner Barros said that the City relies on a book based on the Sanborn Insurance Maps for structures from the 1930s through the mid-1950s. Later structures should have permits and recordings in either Alameda County or the City of San Leandro. If the City has no record at all, property owners are told to go to the County for the property "worksheet," which should have a compilation of all permits. In addition, Senior Planner Barros said that building inspectors' knowledge about the age of materials, various construction types and so forth can help verify what would be grandfathered.

Vice Chair Houston asked for confirmation that the modification that Senior Planner Barros proposed would not alter the existing policy.

Member Palma said that while she understands Chair Daly's point, particularly about fences that are not built on property lines, she concurs with Member Makin's point about not getting the City involved in property owners' decisions to put room-size drop-ins in their yards. She said that she wouldn't want to have to get a permit for such an accessory structure if she decides to buy one. Bigger structures, she added, are definitely a concern – and those would trigger setback requirements.

Member Mendieta asked what is currently required of an owner in terms of maintenance of accessory structures. Senior Planner Barros said that the City has the ability to consider something an eyesore only if it is visible from a public street, or perhaps in the case of planned developments, if it's covered by covenants, conditions and restrictions (CC&Rs). If poor maintenance led to safety concerns, she said the City could call in building inspectors to determine whether a structure is unsafe.

In response to a further question from **Member Mendieta**, Senior Planner Barros said that most of the accessory structures are placed on concrete slabs.

Chair Daly asked whether smaller structures that require no building permits must meet any code requirements. Senior Planner Barros said that no building code requirements

apply, but they would have to adhere to the height regulations. The City actively discourages use of T1-11 siding at the permit counter.

Member Mendieta asked whether there's any history within the past 10 to 20 years of structures so inferior that someone sustained a serious injury. Senior Planner Barros said that she was not aware of any in her 10-plus years with the City.

3) Fences in the Residential Single-Family View Preservation Overlay District (RS-VP): Senior Planner Barros noted that view preservation area in Bay-O-Vista was created in Zoning Code amendments in 2001 and showed the RS-VP zoning overlay on a map, noting that the residential single-family neighborhoods in the flat area north of Estudillo Avenue around Chabot Park are not part of it. In 2001, the City instituted a design review process to deal with second-story additions, and in this neighborhood, even adding 250 square feet triggers such a review. In 2007, a change in fencing regulations in Bay-O-Vista required any fencing above three feet to be made of glass. The proposed change would make that regulation more flexible, because certain fencing proposals in some RS-VP areas – particularly around Benedict Drive and in the hills where homes on a ridge are all side-by-side – has no view implications at all.

4) Paving in Residential Front Yards in Residential Districts: The Zoning Code includes language about residential driveways and parking, Senior Planner Barros said, but the provisions aren't gathered into an explicit policy indicating the amount of paving allowed. The proposed amendments would limit installation of paving/impervious surfaces to a maximum of 50% of the front yard, avoiding situations of homeowners paving over their entire front yards. Senior Planner Barros said that she conducted a survey of homes, and found front yards typically 50 feet wide and 20 feet deep, or 1,000 square feet. Of that, a homeowner could pave up to 500 square feet. Considering walkways and driveways, she said, most of these homes have about 400 square feet of impervious-surface. She said that the proposal would not prevent installation of pervious pavers on the entire front yard, she said.

As additional background, **Assistant City Attorney Pio Roda** pointed out that San Leandro has joined other jurisdictions in appealing to the State Water Resources Control Board its permitting requirements for stormwater entering their municipal sewer systems. Noting that some of the State Water Board's regulations are more stringent than jurisdictions are able to comply with, he said this proposed Zoning Code change is supportive of the City's position in that it indicates to the State that San Leandro is cognizant of issues related to its permit, and that more stringent State regulations related to stormwater permits are unnecessary. Senior Planner Barros said that residences do not typically trigger the stormwater requirements, but this move does demonstrate that San Leandro develops and implements sustainable policies.

Senior Planner thanked the Board members for their comments and noted that the item was scheduled to be heard by the Planning Commission in two weeks and that staff would consider incorporating the Board comments into that proposal.