



# City of Santa Barbara California

## PLANNING COMMISSION STAFF REPORT

**REPORT DATE:** November 9, 2006  
**AGENDA DATE:** November 16, 2006  
**PROJECT ADDRESS:** Citywide (MST2006-00582)  
 Proposed Zoning Ordinance Amendments  
**TO:** Planning Commission  
**FROM:** Planning Division, (805) 564-5470  
 Daniel Kato, Senior Planner *DK*  
 Susan Reardon, Project Planner *SR*

### **I. PROJECT DESCRIPTION**

The project consists of amendments to the City's Municipal Code to clarify the setback requirements for new development along alleys and private streets and revise the existing definition for boarding houses. The proposal also includes an amendment to the existing definition of "alley" and the addition of new definitions for "driveway," "street," and "private street."

### **II. RECOMMENDATION**

Planning Staff recommends that the Planning Commission hold a public hearing, discuss the proposed changes and forward their recommendations to the Council Ordinance Committee.

### **III. BACKGROUND**

In 2004, the Planning Commission reviewed a number of proposed amendments to the Zoning Ordinance that aimed to clarify and simplify existing requirements. The major portion of the amendment package included the clarification of all aspects of "yards" (setbacks, open yard, private outdoor living space, definitions, etc.). Other proposed amendments related to parking, storage, fences/hedges, family day care, Conditional Use Permits, allowed uses, Modifications, temporary seasonal uses, and minor/miscellaneous changes. At the conclusion of the public hearings, the Planning Commission recommended the City Council adopt the majority of the proposed amendments.

The City Attorney's office is in the processes of preparing those amendments for Ordinance Committee review. As part of this first phase of proposed amendments, Staff wants to include the discussion of setbacks along alleys, and boarding house use allowances and enforcement issues. Therefore, Staff is returning to the Planning Commission today to discuss these two issues. The outcome of today's public hearing will be forwarded to the City Council for inclusion in this first phase of amendments.

#### **IV. DISCUSSION**

##### **A. SETBACKS ALONG ALLEYS AND PRIVATE STREETS**

As part of the first round of amendments to the Zoning Ordinance, Staff is proposing to clarify the required setback for new development along alleys. However in researching this issue, it has become evident that definitions for driveway, street, and private street are necessary to be able to differentiate between the different types of roadways found within the City and to clarify the required setbacks along each of them.

##### Alleys

Currently, the Zoning Ordinance is not clear on the required setback for development adjacent to an alley. Historically, staff has determined that if an alley is named, and is shown on the official City street map, then a front setback is required. If it is an unnamed alley, whether or not shown on the official City street map, then the interior setback requirement has been applied, unless the alley provides the only means of access to the property. In that instance, a front setback has been required. This has led to discrepancies in setbacks along alleys and disparity between adjacent properties. There are instances where only one or two parcels along an alley have their only means of access from that alley. These one or two parcels require a front setback while the other parcels require an interior setback. Additionally, there are many more alleys located in and around the downtown area that are not shown on the official City street map. Many of these alleys appear to be publicly owned and would therefore, based on the current definition, require a front setback if the alley were named. In most instances, the properties which abut them are fully developed with little to no setback from the edge of the traveled way. Given this, Staff is proposing that an interior setback be required for new development that fronts along an alley. Depending on the zoning of the adjacent property, this would result in a required setback of between five to 10 feet. The interior setback, for the most part, would reflect existing development patterns and provide for compatible new development. Given that the majority of existing development along alleys was constructed with little to no setbacks, the proposed amendment is not anticipated to create a significant number of non-conforming structures.

##### Private Streets

With regard to private streets, there has been discrepancy in the required setback for new development. In the past, both the interior and front setbacks have been applied to new development, depending on the situation. However in the recent past, new development along a street, whether or not the street is public, has been required to provide the front setback. Staff is proposing an amendment to the Zoning Ordinance to make it clear that a front setback is required from a street whether the street is public or private. This would provide for clarity in the requirement, consistency in its application, and for consistency of development along the streetscape. Given that there has been past discrepancy in the setback that was applied to new development along a private street, there is the potential that the amendment would create non-conforming structures in regards to the front setback. In those instances, a property owner would either need to propose a project that conformed to the front setback or request a

modification of the requirement if a conforming addition could not be proposed due to site constraints or other conditions.

### Driveways

The Zoning Ordinance does not require setbacks for new development along driveways. This is due to the fact that typically, driveways are located on private property rather than separated by a property line. However, questions have arisen regarding appropriate setbacks when a proposed driveway serves larger lots in the foothill areas where the length of a proposed driveway exceeds what is commonly thought of as a typical length for a driveway. Staff is proposing an amendment to make it clear that a setback is not required by the Zoning Ordinance for development along a driveway. However, as is the case now, if a driveway is not located on the subject parcel and is separated by a lot line, an interior setback would be required from the lot line.

### Definitions

The discrepancies regarding the required setback have come about due to the lack of clarity on what is considered a street. Currently, there is no definition for street, private street, or driveway in the Zoning Ordinance. Additionally, the current definition of alley is not clear on whether an alley is a type of street for which a front setback is required. To clarify the requirements, amendments are proposed to define street, private street, and driveway and to better define an alley. The proposed definitions will focus on the function of the different types of roadways. In general, most alleys are less than 25 feet in width, lack public improvements, and are separated from adjacent property by a property line. Driveways are also narrow and generally lack curb, gutters, and sidewalks. However, they are usually located on private property and not separated by a property line. These elements will be taken into account in proposed definitions.

## **B. RENTING OF ROOMS IN SINGLE-FAMILY ZONES**

From time to time, the City receives complaints from neighbors that single family homes in their neighborhood are being rented to several individuals as a boarding house. The complaints focus mainly on the transient nature of the residents, excessive cars, noise, and lack of upkeep of the residential unit. The Mayor has requested that Staff explore options that may be available to the City to deal with issues associated with the renting of rooms in single family zones.

### History

In the 1970s, the City had a definition of boarding house that distinguished between related and unrelated persons in setting occupancy limits for single family homes. In 1980, the California Supreme Court ruled that the distinction based on family relation violated the right to privacy in the State Constitution. Additionally, the Court stated that the provision did not bear a rational relationship to the City's stated goal of addressing overcrowding because it only restricted the number of unrelated residents while allowing an unlimited number of related residents.

Following the court decision, the City amended the definition of boarding house to remove the distinctions based on family relation. The current definition of boarding house is contained in Section 28.04.100 of the Municipal Code:

*A building, group of buildings or a portion of a building which is designed for or occupied as sleeping quarters for five (5) or more guests for definite pre-arranged periods of seven (7) or more days and wherein individual rooms do not have kitchens. A boarding house may serve meals to its guests from a central kitchen facility and may also contain not more than one (1) dwelling unit.”*

Boarding houses are not an allowed use in the single family zones. In the R-2, R-3 and R-4 Zones, a conditional use permit (CUP) is required. Also, boarding houses must provide one additional parking space per bedroom on-site.

#### Enforcement

Enforcement based on the current definition of boarding house is problematic. First, there are several factual elements that must be established in order to determine that a particular residence is a boarding house as opposed to a single family home: (1) the home is being occupied by 5 or more "guests" (currently undefined), (2) the guests are occupying the building for definite pre-arranged periods of 7 or more days, and (3) the individual rooms do not have kitchens. Each of these elements must be established before a dwelling can be treated as a boarding house. It is difficult to establish the required elements without the assistance of the residents. Many times the residents are coached on what to say. If a property owner or resident asserts that they are a "family" or "housekeeping unit," it is very difficult to prove otherwise.

Second, the use of the term guest in the definition of boarding house makes distinctions based on the identity of the residents as opposed to the nature of the use. The Municipal Code does not define the term "guest." In 1996, the Court of Appeal invalidated an ordinance that distinguished between owners and non-owners. The Court stated that the ordinance violated the renters' equal protection rights because there was no rational connection between the City's stated purpose of preventing overcrowding and the ordinance's differing treatment of owners and renters (i.e., more than five renters prohibited, but more than 5 owners allowed). With the use of the undefined term "guest", it could be argued that the City's current definition of boarding house suffers from a similar infirmity. Some jurisdictions have looked for other ways to regulate the rental of rooms in single family residences. In 2003, the California Attorney General issued an opinion in response to a request by the City of Lompoc that stated a city may regulate the operation of a boarding house in a single family zone where a boarding house is defined as a dwelling in which three or more rooms are rented to individuals under separate rental agreements, with or without individual cooking facilities and whether or not a owner or manager is in residence. The Attorney General concluded an ordinance directed at a commercial use of property that is inconsistent with the residential character of the neighborhood and which is unrelated to the identity of the users is a reasonable exercise of legislative power.

Both the cities of Lompoc and Santa Maria have adopted an ordinance that regulates the number of residential leases that may be let in dwellings in single family zones based on the

Attorney General's opinion. Staff has contacted each of these cities to inquire about their enforcement efforts regarding boarding houses. According to the Lompoc City Attorney's Office, the City of Lompoc is not actively enforcing their boarding house ordinance. The Lompoc ordinance was developed in response to a single incident that has since resolved itself and the City has not received further requests for enforcement. Conversely, the City of Santa Maria has a relatively active enforcement posture that includes uniformed zoning enforcement officers interviewing residents of a suspected boarding housing in order to establish the necessary factual basis for enforcement. When this effort is not successful, usually due to tenants being coached to not discuss the rental status, Santa Maria's zoning enforcement officers usually fall back to strict enforcement of parking, setback and nuisance ordinances for the property.

### Options

Due to the enforcement challenges outlined above, the City Attorney's Office does not recommend enforcement under the current definition of boarding house. However, staff is interested in finding a definition of boarding house that could enable property owners who want to propose a boarding house or whose property may be already developed with a building that could easily be converted to a boarding house (such as the conversion of a large senior care facility to a boarding house), the opportunity to do so in the R-2, R-3 or R-4 zones with the approval of a CUP.

Staff recommends that the boarding house definition be amended to define a boarding house based on form and function, rather than occupancy. The underlying theme would be that a situation in which people share a house, with common kitchen and living areas, is not a boarding house (i.e. if it looks like a house, it is a house regardless of who's living in it).

If the Planning Commission is interested in trying to enforce on the renting of rooms using the boarding house definition, other options could be pursued. These options include: (1) amend the current boarding house provisions to define "guest" focusing more on transient use (less than 30 days), or (2) pursue an ordinance amendment regulating the number of leases for a single residence in line with the Attorney General's opinion. However, because ordinances focusing on the length or number of leases can be easily thwarted by coaching tenants, Staff does not recommend either of these options. Staff is concerned that pursuing such options would continue to foster unrealistic expectations of enforcement by the neighbors. Staff wants to provide clear and realistic expectations to property owners and neighbors. Even the City of Santa Maria has indicated that they have little recourse when a tenant refuses to discuss the situation or they assert that the people in the residence are one household. Enforcement of a provision that regulates the renting of rooms under separate contracts, either written or oral, would be difficult. How would one prove the existence of an oral contract?

Staff recommends that the Planning Commission consider an amendment to the Municipal Code that would define boarding house as described above and continue to require a CUP for boarding houses in the R-2, R-3, and R-4 zones. However, as discussed above, even with provisions regarding boarding houses, the City is limited in its ability to enforce the provisions.

For complaints of room rentals in houses, Staff would continue to enforce the noise ordinance, parking requirements, setback and open yard standards. Concerns relating to overcrowding and illegal garage and room conversions would continue to be enforced upon by Community Development Department staff.

The issue of boarding houses also brings up a larger issue in single family neighborhoods. A complaint that staff frequently receives in regards to larger houses is that they tend to have more cars which tend to be parked on the street, thus creating an impact to the neighbors. Other communities have dealt with this issue by requiring additional on-site uncovered parking for larger residences. That issue is larger than the boarding house issue and was discussed as part of the Neighborhood Preservation Ordinance update. The issue of providing additional parking for larger residences will be comprehensively reviewed at a later date.

### **C. ENVIRONMENTAL REVIEW**

Staff has determined that the proposed amendments are exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15305, Minor Alterations in Land Use Limitations. Minor Zoning Ordinance amendments that do not significantly change planned uses in an area have been determined by the City to be consistent with this class of exemptions.

### **V. CONCLUSION AND NEXT STEPS**

Staff recommends that the Planning Commission hold the public hearing, discuss the proposed changes and forward their recommendations to the Council Ordinance Committee. The amendments related to setbacks along alleys would clarify and simply the setback requirements along both public and private alleys and would provide uniformity of improvements along the alley streetscape. In addition, the amendments related to private streets and driveways would clarify the City's requirements regarding setbacks from these types of roadways. The proposed amendments to the boarding house definition would continue to provide options for properties zoned R-2, R-3, and R-4 while not creating unrealistic expectations of enforcement by neighbors.

Following the public hearing today, Staff will forward the Planning Commission recommendations to the Ordinance Committee for inclusion in the first phase of proposed Zoning Ordinance amendments. Staff plans to return to the Planning Commission after the first of next year to begin discussions on the second round of amendments.