



City of Blaine Anoka County, Minnesota

Blaine City Hall
10801 Town Sq Dr NE
Blaine MN 55449

Legislation Text

File #: ORD 20-2465, Version: 4

DEVELOPMENT BUSINESS - *Lori Johnson, City Planner*

SECOND READING

A CODE AMENDMENT TO THE R1-B (SINGLE FAMILY) ZONING DISTRICT TO ALLOW ACCESSORY BUILDINGS UP TO 120 SQUARE FEET WITH VARIOUS LOCATIONAL AND DESIGN CRITERIA. (CASE FILE NO. 20-0032/LSJ)

Planning Commission (Public Hearing)	10/13/20
City Council (1 st Reading)	11/02/20
City Council (2 nd Reading)	11/16/20
City Council (Adopt Resolution or Hold 2 nd Reading)	12/07/20

At the November 16, 2020 meeting, Council tabled consideration of Resolution 20-169, denying adoption of proposed Ordinance 20-2456 until December 7. After discussion, Council removed Resolution 20-169 from the table, after which they adopted second reading of Ordinance 20-2456 as amended and outlined in Option 3 with a protective buffer zone of 75 feet around a stormwater pond. Resolution 20-169 was never acted upon and will be recorded in the permanent record as not adopted and cross-referenced to the adopted Ordinance 20-2456.

Update to Original Staff Report

On November 16, 2020 the City Council tabled a decision on the ordinance change allowing accessory buildings (with standards) in the R-1B zoning ordinance. The decision was tabled to allow for staff to prepare various options for the City Council to consider based on discussion at the meeting. The updated staff report addresses public comments from the November 16, 2020 meeting, provides information on things discussed by the City Council, and provides several options for the City Council to consider prior to a final determination.

Public Comment Information from November 16, 2020

Staff has done research into some of the public comments at that meeting and would like an opportunity to clarify various items from that meeting.

- There have been several comments about the “petition” that was conducted in the Sanctuary neighborhood over the summer months of 2020. Staff suggested this process as an unofficial way to “take the temperature” of the neighborhood with regard to

accessory buildings being allowed in the R-1B district. This was never meant to be a formal petition process or a way to allow citizens to change the zoning code. The City can utilize formal petition processes for things like public improvements but items like ordinance changes cannot be petitioned for by residents. From staff's perspective, it was simply a way to gauge interest in the neighborhood, and it was done as a way to be transparent to the neighborhood about this particular issue.

- There was a question at the last meeting about learning the identity of an individual who makes a code complaint about a property. Minnesota Statutes Section 13.44, Subdivision 1 states that the identities of individuals who register complaints with government entities concerning violations of state laws or local ordinances concerning the use of real property are classified as confidential data. Confidential data on individuals is not public and is not accessible to the subject of the data, absent a court order.
- There have been two instances where residents have stated that city staff informed them that accessory buildings are allowed. Without knowing the context of the conversations and what exactly was discussed, it's impossible to determine whether inaccurate information was provided. The City Attorney confirmed that if inaccurate information was provided to a resident, this could not be used as a basis to not enforce code requirements.
- Staff has received complaints on 12 properties within the Sanctuary development regarding illegal accessory buildings. Please see the attached spreadsheet for information on these buildings. This information was obtained from resident complaints, air photography and inspections of the neighborhood. It's possible there are additional violations and those situations would be inspected and determined whether they are permitted or not based on regulations in place.

Possible Regulations

There were various issues discussed by the public and City Council at the November 16, 2020 meeting. Below is further information on those issues.

1. It was clear that many people who live on a lot adjacent to a storm water pond do not want accessory buildings to be allowed on these types of lots.
 - The City Attorney was consulted on this issue and he would be uncomfortable specifically allowing accessory buildings on some lots but not others within the same neighborhood. It would confer special privileges on some lots and other lots would be deprived of these privileges.

- The City Attorney also indicated a buffer zone (setback) could legally be established that would essentially make it very difficult for lots on a storm water pond to have an accessory building. This could be done by referencing the storm water code in the code of ordinances for the City. Staff is suggesting a buffer of 75 feet for accessory buildings only. This may not cover all rear yards adjacent to the ponds, but the lots that are extremely large generally back up to open space on the ponds rather than other lots on the ponds.
2. Screening of accessory buildings was also brought up at the last meeting, and that is a very subjective requirement and would not eliminate the issue of having a visual obstruction on the pond. The setback issue listed above hopefully would eliminate the need for screening.
 3. The possibility of reducing the sizes of the accessory buildings allowed has been reviewed. Based on what we know of the neighborhood, a majority of the accessory buildings that are in place are 120 square feet or smaller. There are currently two that are larger than this, and staff needs to determine the size of two other structures that could be larger than this as well.
 4. Councilmember Hovland suggested at the previous meeting that the accessory buildings should be required to be placed adjacent to the home so they are not as visible and appear “attached” to the home.
 - If the structure were to be attached to the living space side of the home, the structure, no matter the size, would require frost footings, full foundation and a fire rated wall between the accessory building and the home.
 - If the structure were to be attached to the garage side of the home, frost footings would also be required, no matter the size of the structure.

By requiring the accessory buildings to be placed immediately adjacent to the home, this would mean that all accessory buildings currently in existence would need to be removed or replaced. It would also be most costly to the homeowners to construct the accessory buildings in this manner.

Recommendation

Staff would like to present three options for the City Council to consider for this item. These options are outlined below.

1. The Council could deny the request for a code amendment by passing the resolution of

denial submitted with this staff report. This would require everyone in the Sanctuary with an accessory building to follow current ordinance requirements and the existing accessory buildings would need to be removed.

2. The Council could approve the request to change the code for the R-1B zoning district and allow accessory buildings on every lot according to the following standards:
- Accessory buildings up to 120 square feet would be allowed. Total garage and accessory building space cannot exceed 1,200 square feet.
 - One detached accessory building per lot is allowed.
 - Accessory buildings are allowed in the rear yard only and must meet a five-foot setback from the property line.
 - Architectural style and color must match the house.
 - Accessory building access doors cannot exceed 8 feet in height.
 - Accessory buildings placed within a drainage and utility easement are done so at the owner's risk of removal by the City or other agencies that may have legal use of the easement.

If this option is chosen, it is possible that up to 4 of the 12 existing accessory buildings would need to be removed. Three of the accessory buildings exceed 120 sf. and one needs further investigation. This option would also allow accessory buildings to be located on lots with a storm water pond in the rear yard.

Also, keep in mind that there is no building permit or zoning permit required for accessory buildings of 120 square feet or less unless they have a permanent foundation. More than likely, staff will not know if these buildings go up unless a complaint is received.

3. The Council could choose to allow accessory buildings in the R-1B zoning district by approving a code amendment that includes the standards listed in option two, but adding another standard as follows;
- Pursuant to Ordinance Section 34-521, no detached accessory buildings (not including pools, additions to the existing home or concrete slabs) may be located in the protective buffer zone of any stormwater pond. The protective buffer zone for the R-1B district is **75 feet** from the high-water level of the stormwater pond as defined in Ordinance Section 34.462.

This methodology allows 7 homeowners to keep their existing accessory building. If this option is chosen, it is possible that up to 5 of the 12 existing accessory buildings would

need to be removed. Three of the accessory buildings exceed 120 sf. and one needs further investigation. It is difficult to ascertain high-water levels without surveys of each lot but staff does have easement data that suggests one of the existing accessory buildings (10507 Alamo St.) would need to be removed as they are adjacent to a storm water feature as depicted on the attached accessory building map. This option will still allow for some pond lots to have accessory buildings, however, greatly reduces the amount that would be allowed without a buffer (as outlined in option 2).

Please keep in mind that there is no one solution that will appease everyone in this neighborhood. Staff has worked to create opportunities for compromise by adding the options described above. With every option provided below the City Council should be aware that there will be a need for greater enforcement efforts and it could create enforcement protocols that extend beyond what is currently the standard of code enforcement personnel (i.e. additional documentation required, routine inspections not previously required, additional staff time dedicated to this neighborhood.)

Staff Report Prepared by Lori Johnson

The Planning Commission voted 3-2, with one abstention, to deny the code amendment. There were several comments at the public hearing and the following is a brief synopsis of what occurred:

- The two residents that conducted the survey spoke on their behalf and explained their strategy for the survey. They feel that there is a need to allow accessory buildings in the Sanctuary development.
- There were many references to the zoning code requirements versus the requirements of covenants for the neighborhood. Staff addressed this at the meeting but it is also mentioned below in this report.
- There were seven residents who were in attendance that indicated they did not want a code amendment to allow accessory buildings in the R-1B district.
- There were four residents who were in attendance that indicated they did want to see the proposed ordinance enacted to allow accessory buildings of 120 square feet or less in the R-1B district.
- Those in opposition to the ordinance expressed concerns over how the survey was conducted.

NOTE - FROM THE ORIGINAL STAFF REPORT

In the spring of 2020, staff received a complaint regarding numerous accessory buildings in the Sanctuary housing development. This development is zoned R-1B (Single Family) and no

accessory buildings are allowed within this zoning district.

Community standards staff did an inspection on the addresses that were listed in the complaint and determined that there were several accessory buildings that were not allowed by ordinance in the Sanctuary development. When the homeowners with the accessory buildings received a letter from the City stating that they needed to remove the buildings, the homeowners reached out to the Planning Department. Some homeowners were not aware of the ordinance requirement and did not understand why these buildings were not allowed. Staff gave the residents the opportunity to survey the property owners in the Sanctuary to gauge the interest in changing the code requirements to allow for accessory buildings.

To be clear, staff did not want to initiate a code amendment based on the objections of a few residents of the Sanctuary development. Over the years, this has been a topic for discussion several times, as different property owners have put up accessory buildings without approval and had to have them removed. There was never any attempt at changing the code as several owners had made their feelings known during these times that they did not want accessory buildings in this development. This time, staff left it up to the property owners to make their case to the Planning Commission and City Council.

There is currently no organized homeowner's association for the Sanctuary development, which is why staff suggested that the homeowners who wanted to change the ordinance survey the property owners in this development. These residents took it upon themselves to conduct a survey of all property owners to determine opinions on whether accessory buildings should be allowed. The survey resulted in more than 50% of the property owners in the Sanctuary wanting to change the ordinance to allow accessory buildings. The results are attached to this item.

Staff worked with the residents in conducting the survey to create ordinance requirements for accessory buildings in the R-1B zoning district. The ordinance requirements include the following criteria:

1. Accessory buildings up to 120 square feet would be allowed. Total garage and accessory building space cannot exceed 1,200 square feet.
2. One detached accessory building per lot is allowed.
3. Accessory buildings are allowed in the rear yard only and must meet a five-foot setback from the property line.
4. Architectural style and color must match the house.
5. Accessory building access doors cannot exceed 8 feet in height.
6. Accessory buildings placed within a drainage and utility easement are done so at the owner's risk of removal by the City or other agencies that may have legal use of the easement.

*Please note that there was some confusion about the wording of the survey. The survey initially indicated that “no response” to the survey would be counted as a “yes” vote to allow the detached accessory buildings. Staff received several complaints on this method and the individuals conducting the survey sent a follow-up survey to all property owners clarifying that “no response” could not be counted as a “yes” vote. The surveyors worked hard to contact all property owners for a response.

The question has also been asked about playhouses and what is allowed from an accessory building standpoint. The City’s zoning ordinance currently states that accessory buildings include sheds and playhouses that are over 30 square feet and greater than five feet in height, and gazebos. There was at least one playhouse and one gazebo included in the complaints in the Sanctuary this spring. This language currently in the City’s zoning ordinance would allow those accessory buildings to stay in place if they are not greater than 120 square feet and have a 5-foot setback from the rear and side property line. At the public hearing, one resident indicated that he had been told by staff that he could have the playhouse approximately 12 years ago. After some investigation, staff does not agree with this assessment of this situation.

Staff has decided to remain neutral in its recommendation to the City Council. From staff’s perspective, the homeowners that asked for an ordinance change followed all procedures set forth by staff and did their due diligence for determining support for allowing accessory buildings. On the other hand, staff understands that property owners may not want to change the long-standing ordinance because they do not want to see these types of structures in their neighborhood. Many property owners built their homes in this development based on knowing the stipulations of the zoning ordinance for their property. The proposed ordinance can be amended the second reading based on feedback from the public and the desire of the City Council.

History

Staff did research into the origins of the R-1B zoning district. The R-1B zoning district was created in 1998 for developments that would benefit from enhanced tree preservation requirements. This district required more effort for tree preservation, slightly larger lots and no detached structures. The Sanctuary neighborhood was first platted in 1999 and the developer determined that this zoning district was appropriate for the project.

The issue of accessory buildings arose in this neighborhood in 2006. At that time, six property owners received letters requiring their accessory building be removed. The item was discussed at a workshop and the City Council directed staff to extend the compliance deadline, however there was no discussion of changing the ordinance. It was acknowledged that the City may receive a request from property owners to change the ordinance and that it was likely there would be opinions on both sides of the issue. Subsequent to the workshop, a letter was sent to

all property owners in the Sanctuary neighborhood explaining the regulations in place regarding accessory buildings.

One homeowner attempted to apply for a variance however it was determined by the City Attorney that a variance could not be applied for as the zoning ordinance doesn't permit "use" variances. All homeowners eventually removed their accessory buildings.

Covenants vs. Zoning Requirements

Some residents commented that there are several homes in the Sanctuary development that do not meet the requirements established for this neighborhood. Many residents referenced the covenants versus the ordinance for the neighborhood. Initially, when the Sanctuary development was established there was a homeowners association that enforced a set of covenants for the construction of the homes and lots. This association, as stated above, has since been dissolved. These covenants were completely independent of the R-1B ordinance, and from the way it sounds, might have been slightly more restrictive than the ordinance. The City does not have the legal ability to enforce covenants that are set up through neighborhood associations. When building permit applications are reviewed, they are reviewed based on the ordinance requirements, and the City does not have record of covenant requirements from active neighborhood associations. This is perhaps why there are some discrepancies between what the neighborhood members believe to be in ordinance form versus covenant form.

Zoning and Location Map

Map of Existing Accessory Buildings in the Sanctuary

Spreadsheet of Existing Shed Details

Property Owners List with Responses

Letter from Residents Conducting the Survey

Ballot Example

Public Comments

Code Amendment Language without Buffer Standards

Code Amendment Language with Buffer Standards

Planning Commission Approved Minutes

By motion, approve the Ordinance.

THE CITY OF BLAINE DOES ORDAIN: (Added portions are underscored and deleted portions are shown with overstrike.)

29.063 - Accessory uses.

a) Attached private garages only. No detached garages or accessory buildings permitted except for chicken coops as regulated under Section 33.22. Detached accessory buildings meeting the requirements of Section 29.065(k) and chicken coops as regulated under Section 33.22.

29.65 - Standards.

(k) It shall be required for all single family dwellings that there be an attached garage constructed of a minimum of five hundred twenty-eight (528) square feet (twenty-four (24) feet by twenty-two (22) feet). Total attached garage space and detached accessory building space shall not exceed twelve hundred (1,200) square feet of gross area. A minimum garage shall be located on the lot such to allow for future expansion of ten (10) feet in width.

Garages (attached) shall have a rear and side yard setback of not less than 10 feet. Detached accessory buildings shall have rear and side yard setback of not less than five feet. However, pursuant to Ordinance Section 34-521, no detached accessory building may be located in the protective buffer zone of any stormwater pond. The protective buffer zone for the R-1B district is 75 feet from the high water level of the stormwater pond as defined in Ordinance Section 34.462.

One detached accessory building per lot is allowed and the square footage of the detached accessory building shall not exceed 120 square feet. A minimum garage shall be located on the lot such to allow for future expansion of ten (10) feet in width.

The architectural style and color of an attached garage and detached accessory building shall be compatible with the principal building. The facing material of the attached garage shall be compatible with the principal building. Garage (attached) doors shall not exceed ten (10) feet in height and detached accessory building doors cannot exceed 8 feet in height. (Ord. No. 94-1501, amended 4-21-1994)

Detached accessory buildings placed within a drainage and utility easement are done so at the owner's risk of removal by the City or other agencies that may have legal use of the easement.

INTRODUCED and read in full this 2nd day of November, 2020.

PASSED by the City Council of the City of Blaine this 7th day of December, 2020.