

Item #: _____

Date: 09/10/25

**CITY OF AMES
DEPARTMENT OF PLANNING AND HOUSING
REPORT TO THE ZONING BOARD OF ADJUSTMENT**

REQUEST: APPEAL OF A DECISION OF THE ZONING ENFORCEMENT OFFICER REGARDING THE STRUCTURE AT 607 AND 609 6TH STREET BEING A PRE-EXISTING TWO-FAMILY DWELLING IN CONTINUOUS USE

Tammy Flick, on behalf of Ronald Gibb, the owner of 607/609 6th Street, is appealing the interpretation of the definition of a pre-existing two-family dwelling (see Attachment A – Planning Director’s Decision). **The appeal is specific to the defining characteristic of “continuous use”, which is part of the definition of a pre-existing two-family dwelling and allows it to maintain its status as permitted by the Zoning Ordinance.** The appellant asserts that the property continues to qualify as a pre-existing two-family dwelling and should retain that status as the structure has not been modified back into a single-family dwelling, despite the long-term vacancy of one of the units.

The property is zoned Residential Medium Density (RM), where two-family dwellings are permitted either as pre-existing structures or as new construction meeting certain design and improvement standards. **The two-family dwelling at 607/609 6th became pre-existing with changes to the Zoning Ordinance effective April 3, 2024.** Previously, two-family dwellings were permitted by right in the RM zone. More information on this amendment is included in the Addendum.

Pre-existing two-family dwellings are permitted as long as they are continuously used. **By definition, this allows for a one-year period of discontinued use before the pre-existing status is lost.**

Staff contends that the defining characteristic of continuous use requires some level of occupancy of both units. This may be either that 1) both units are occupied, as shown by utility billing or other documentation, or 2) that there is a valid rental permit (Letter of Compliance) to rent a dwelling as two units. Further, physical alterations to make the structure into a single-family dwelling despite use/occupancy cannot have occurred.

A Letter of Compliance for a two-family rental was maintained until 2018 when the property owner chose not to renew. The second unit became vacant at this point. The owner continued to occupy the main unit until recently due to declining health. No evidence that the second unit has otherwise been occupied has been presented.

Staffs' determination for the subject property is that the pre-existing status was lost as the actual use has been discontinued for more than one year. As the Letter of Compliance was already expired when the structure became pre-existing, the allowed one-year period of discontinuance commenced with the adoption of the Ordinance in 2024 and has since passed as of April 3, 2025.

However, the appellant indicates no work has occurred to modify the units and that they remain as independent units with no internal connection other than a basement and enclosed porch. This is the basis of their appeal that it should still be considered a pre-existing two-family dwelling (see Attachment B for Appeal Letter).

The property is currently for sale and, as part of the marketing of the property, a determination from the Planning Director was requested on if it could still be considered a pre-existing two-family dwelling. The appellant has not applied for new permits for this activity with the City. The appeal is in response to correspondence that the use is not allowed.

BACKGROUND:

The appellant indicates that the dwelling in question (607 and 609 6th Street) was converted into a two-family dwelling in the late 1980s. There are several trade permits on file from this time that reflect conversion work.

The units are stacked, with an upper and lower unit. They have separate entrances off an enclosed front porch. They have their own private kitchens and baths, and separate entrances from the units to the dwelling's basement. They have no other internal connections than the enclosed porch and basement. The original stairway connection between the floors remains framed in.

Rental records show that the property became a registered rental in 1998, shortly after the current owner purchased the property. The owner occupied one of the units. The second was rented until 2018.

BASIS OF DEPARTMENT DECISION:

Planning and Rental Inspection staff are frequently asked questions about rental properties that may have previously been a two-family dwelling, and whether they can be converted or reestablished as a two-family dwelling.

As a result, in June of 2017, a new definition of pre-existing two-family dwellings was introduced:

Dwelling, Two Family Pre-existing: A two family dwelling designed and built as, or converted to a two-family dwelling, pursuant to a zoning and building permit as evidenced by approved building/zoning permits on file with the Chief Building

Official. However, a home subject to a retroactive conversion permit does not meet the definition of being a two-family dwelling pre-existing.

The term “pre-existing” was also defined with this amendment, which may apply to two-family dwellings as well as single-family attached dwellings and apartment dwellings:

Pre-existing means a legally established use that was a permitted use existing on a site at the time of adoption of Ordinance No. 3557, Enacting a New Chapter 29 (Zoning) in the year 2000, and remaining in continuous use since that time. For purposes of this definition, ‘continuous use’ would include a period of discontinuance of the permitted use when that period is for less than one year.

Based on these definitions, pre-existing two-family dwellings may continue indefinitely provided they meet two main criteria:

- They are continuously used with up to a one-year period of discontinuance.
- They were established through a zoning or building permit and not a retroactive conversion permit.

A copy of the 2017 report to City Council that accompanied the Ordinance is included as Attachment C.

Staffs’ decision is that the continued use necessary to maintain pre-existing status requires actual occupancy of the structure. The definition of pre-existing references the current use of the units, rather than design or an intention for future use. This is intentional and modeled after the allowances for non-conforming uses. Per the 2017 staff report on the amendment introducing definitions for pre-existing and pre-existing two-family dwelling:

Under the current language, a two-family home, if determined to be pre-existing physically in 2000, may stop being rented for any length of time and could be reestablished as two rental units. Staff believes that in most neighborhoods reestablishing a duplex would be a surprise to a neighborhood and would affect the availability of homes that could provide for home ownership versus rental investment potential.

The proposed amendment narrows the meaning of the phrase [pre-existing] to clarify the intent of the standard for pre-existing as similar to a traditional non-conforming use that is only permitted if it has been continuously used as a two-family home, and that if the use has ceased, it is not eligible to be reestablished despite its use in 2000 . . . The proposed amendment preserves the intent of allowing established two-family homes as permitted uses if they are continually used as a two family home, but ensures that their reuse is consistent with current

expectations and that unexpected two- family uses do not appear within established neighborhoods (emphasis added).

Further, the report clarifies that having an active rental license or otherwise evidence of two families residing in the two units are defining characteristics of being continuously used:

Additionally, standards would be added to reflect that if a two-family dwelling ceases to be used as two dwelling units for more than one year, it cannot be reestablished as a two-family unit . . . Discontinuance would mean occupancy of the structure as a single dwelling unit, expirations of Letter of Compliance for use of the property as a two-family rental property, or physical alterations to the structure that make the structure a single- family dwelling (emphasis added).

In summary, staffs' determination is that continuous use is more than maintaining physically separate units. A Letter of Compliance or actual occupancy of both units is necessary to maintain pre-existing status. For the subject property, only occupancy of one unit has been maintained and the Letter of Compliance expired in 2018.

Relevant Ordinance sections related to this determination are as follows:

Sec. 29.702. "RM" RESIDENTIAL MEDIUM DENSITY.

**Table 29.702(2)
Residential Medium Density (RM) Zone Uses**

USE CATEGORIES	STATUS	APPROVAL REQUIRED	APPROVAL AUTHORITY
RESIDENTIAL USES			
Group Living			
Hospices, Assisted Living, and Nursing Homes	Y	SP	ZBA
Supervised Transitional Home	Y, subject to Section 29.1314	ZP	Staff
Household Living			
Single Family Dwelling	Y	ZP	ZEO
Two Family Dwelling	Y, if pre-existing Y, new construction is subject to Section 29.410(2)	ZP	ZEO/P&H Dir.
Single Family Attached Dwelling	Y	SDP Minor	Staff
Apartment Dwelling (12 units or less)	Y	SDP Minor	Staff
Family Home	Y	ZP	ZEO
Dwelling House	Y	ZP	ZEO

Sec. 29.201. DEFINITIONS.

(69) **Dwelling, Two-Family** means any building consisting of 2 dwelling units, each designed for separate and independent occupancy.

(70) **Dwelling, Two Family Pre-existing:** A two family dwelling designed and built as, or converted to a two-family dwelling, pursuant to a zoning and building permit as evidenced by approved building/zoning permits on file with the Chief Building Official. However, a home subject to a retroactive conversion permit does not meet the definition of being a two-family dwelling pre-existing.

(177) **Pre-existing** means a legally established use that was a permitted use existing on a site at the time of adoption of Ordinance No. 3557, Enacting a New Chapter 29 (Zoning) in the year 2000, and remaining in continuous use since that time. For purposes of this definition, 'continuous use' would include a period of discontinuance of the permitted use when that period is for less than one year.

BASIS FOR APPEAL OF DECISION:

The appellant's ability to appeal a decision of the Planning Director is given in Chapter 29.1403(8)(a) as an aggrieved party. The appellant believes the Planning Director has incorrectly interpreted Chapter 29 (Zoning) and specifically that the structure is no longer a pre-existing two-family dwelling as it has not been in continuous use.

The appellant asserts that the structure has not been modified and continues to have two separate, independent units, maintaining it in continuous use and thus its pre-existing status. The appellant notes the home is also assessed as a duplex by the Assessor.

Staff notes that the Assessor's records do not reflect compliance with the Zoning Ordinance or actual use of a property. They are limited to a property's design and condition.

DETERMINATION BY THE ZONING BOARD OF ADJUSTMENT:

The Zoning Board of Adjustment is authorized to consider an appeal of an administrative decision per 414.12 of the Code of Iowa to determine if there was an error. **The appeal process is not an exception or variance process. It is an interpretation of zoning standards that apply uniformly across the City.** The Board must determine there was an error in the interpretation by the Planning Director that the appellant has not maintained the property in continuous use to maintain its status as a pre-existing two-family dwelling.

At issue is not the appropriateness or adequacy of the standards, only if staff made an incorrect interpretation.

ALTERNATIVES:

1. As an appeal, the ZBA would need to approve the appeal and overturn the Director's decision with three affirmative votes, thereby:

- A. Approving the appeal and find that the Planning Director erred and that the appellant is able to use the property as a two-family dwelling as it has been in continuous use and maintains its status as pre-existing.
2. The ZBA may continue the item and request additional information.
3. The Director's decision will stand as is with ZBA denial of the appeal or with less than three votes to overturn the decision.

STAFF COMMENTS:

The appellant asserts that there is an error by the City of Ames administrative official in determining the meaning and interpretation of the Zoning Ordinance in the enforcement of Chapter 29 of the *Ames Municipal Code*. Specifically, the defining characteristic of continuous use for a pre-existing two-family dwelling.

The applicant asserts that as the two independent units have not been modified into a single-family home, it should still be considered pre-existing. Design is only one factor necessary to establish continuous use. The units must continue to be separate, but also in actual use.

Use must be occurring as evident from occupancy or a Letter of Compliance, and it must not have been discontinued for more than one year. This is based on the definition of pre-existing and the discussion of defining characteristics that occurred with the adoption of the definition in 2017.

If the Director's decision stands and the appeal is not approved, the structure will be allowed to be used as a single-family dwelling. This means that the occupancy will be limited to one family under the Zoning Ordinance and as allowed for one unit based on the number of bedrooms under the Rental Code. This allows for three occupants total rather than three occupants per unit as a two-family dwelling.

Therefore, it is the recommendation of the Planning Director that the Zoning Board of Adjustment deny the appeal.

ADDENDUM

Pre-Existing Status

The subject property is zoned Residential Medium Density (RM). Two-family dwellings were allowed by right in RM prior to a 2024 amendment to allow new construction two-family dwellings in all residential zoning districts. Previously, two-family dwellings were only permitted in medium and high-density zoning districts.

New construction of two-family dwellings are subject to design and compatibility standards in Section 29.410(2) of the Municipal Code to ensure newly constructed two-family dwellings are compatible with existing neighborhoods. Conversion of existing structures into two-family dwellings is not allowed, only new construction that conforms to new standards.

As a result, existing two-family dwellings previously permitted by right became “pre-existing” as defined within the Zoning Ordinance. As pre-existing homes, they are not subject to new design standards.