



Date: October 11, 2016

To: Chris Heineman
Director of Community Development
City of Northfield

From: William Weber, Zoning Consultant

Subject: Temporary Health Care Dwellings

You requested that I help you and the Planning Commission think through the subject of “temporary health care dwellings” and provide draft ordinance language for consideration.

The state recently adopted an ordinance saying that unless a City already allows these dwellings as Permitted Uses they cannot be prohibited by a local ordinance that regulates accessory use or recreational vehicle parking or storage. However, that legislation also allowed the City to “opt-out” of this law by resolution of the City Council, which Northfield did.

If the City adopts its own ordinance on this subject, it will have the ability to craft it the way it likes as well as repeal or amend the ordinance in the future if it decides that it is not suitable.

Here are some questions that I think ought to be addressed. You may have others.

1. **Should these dwellings be regulated as structures of vehicles?**
I think they should be regulated as vehicles because they have wheels that will not be removed and they are not intended to be attached to a permanent foundation.
2. **Should these dwellings be regulated as an Accessory Use or as a parked vehicle?**
Consistent with the first question, I think they should be regulated as vehicles.
Note that the zoning code (Section 3.8.3, D, 2) only allows recreational vehicles to be parked in a residential zoning district for 72 hours at a time for the purpose of loading and unloading.
3. **Should the use of these dwellings be restricted to land parcels of a minimum size?**
I think there should be some minimum, and I think that 8,000 square feet is a good cut-off as that is the minimum lot size for an Accessory Dwelling Unit.
4. **Should the use of these dwellings be restricted to certain zoning districts? If so, which districts?**
I think they should only be in the residential districts.

5. Should the placement of these dwellings be restricted to certain portions of a parcel?

This is a difficult question and deserves discussion by the Planning Commission. I think that they should only be allowed to be placed on the portion of the driveway that is in the front yard of the parcel.

- The argument for the driveway is that it is a paved surface and readily accessible by emergency medical technicians or fire fighters. On some lots, there is not enough side yard to safely tow one of these dwellings to the rear.
- The argument for the rear yard is that it is less conspicuous than the front. However, if they dwellings are temporary, placement in the front may be bearable and may encourage them to be removed in a timely manner.
- Unless it is a very large lot, the side yard will rarely be a compatible location.

6. Should there be minimum setbacks from the property lines? If so, what should they be?

The minimum setbacks from the front and side lot lines should be 5 feet.

7. Must the owner of the property live on that property?

I think that either the owner, the legal guardian or the caregiver should live on the property. The owner should be a relative of the resident of the temporary dwelling even if the owner does not live on the property.

8. Must the applicant provide written certification that the resident of the dwelling is mentally or physically impaired?

Verifying medical necessity requires asking for and maintaining non-public Health Insurance Portability and Accountability Act (HIPPA) information as governed by the Minnesota Government Data Practices Act.

Thus, the City should require the individual with the physical or mental impairment or the person with power of attorney to sign the permit application and consent to release his or her information.

9. Does the City care who will provide care?

I don't think so.

10. What should be the time limit, if any, for these dwellings?

Six months.

11. Should time extensions be allowed, and under what conditions?

Only one six-month time extension should be allowed. The City should be absolutely firm on this limit, otherwise a real problem will evolve.

12. What should the maximum size of these dwellings limit be?

240 square feet – 8 by 30 feet.

13. Should these dwellings be attached to a permanent foundation?

No.

- 14. What requirements should the City impose for water service and sewage disposal?**
Tank storage; the applicant should submit to the City a contract for septic service management prior to occupancy.
- 15. Should the City impose requirements for the exterior materials?**
Yes. Dwellings sided primarily with metal, fiberglass or plastic should not be allowed.
- 16. How many people should be allowed to live in such a dwelling?**
One.
- 17. How many such dwellings should be allowed on a lot?**
One.
- 18. Should the City require that a public hearing be held to review applications for the use of such dwellings?**
No. The City does not require a public hearing when someone decides to store a recreational vehicle on a residential lot. Therefore, there is no sense in notifying the neighbors.
- 19. If there is no public hearing, how long should the City take to decide on an application?**
15 days maximum.
- 20. Should the City inspect these dwellings, and to what standards?**
Yes, to ensure that they have acceptable water and sewage facilities.
However, these structures are not usually built to the standards of the Minnesota State Building Code or Electrical Code because they are typically built to the standards of a recreational vehicle rather than a modular home. The City's building official may have a concern about this and should be consulted in this ordinance decision.
- 21. Should the City have the right to inspect the dwelling at reasonable times convenient to the caregiver to determine if the dwelling is occupied and meets the requirements of the ordinance?**
Yes.
- 22. What should be the amount of the application fee?**
Enough to cover the inspection.
- 23. If the permit for the dwelling is revoked, how long should the permit holder have to remove the dwelling?**
30 days.

Comparison of the State Law and the Proposed Local ordinance

Section	State Law	Proposed Northfield Ordinance
Features of a Temporary Health Care Dwelling	<p>A temporary family health care dwelling must:</p> <ol style="list-style-type: none"> 1. Be primarily assembled at a location other than its site of installation; 2. Be no more than 300 gross square feet; 3. Not be attached to a permanent foundation; 4. Be universally designed and meet state-recognized accessibility standards; 5. Provide access to water and electric utilities either by connecting to the utilities that are serving the principal dwelling on the lot or by other comparable means; 6. Have exterior materials that are compatible in composition, appearance, and durability to the exterior materials used in standard residential construction; 7. Have a minimum insulation rating of R-15; 8. Be able to be installed, removed, and transported by a one-ton pickup truck as defined in Minnesota Statutes 168.002, subdivision 21b, a truck as defined in section 168.002, subdivision 37, or a truck tractor as defined in section 168.002, subdivision 38. 9. Be built to either Minnesota Rules, chapter 1360 or 1361 [prefabricated buildings], and contain an Industrialized Buildings Commission seal and data plate or to American National Standards Institute Code 119.2 [recreational vehicles]; and 10. Be equipped with a backflow check valve. 	<p>Same as the state law except as shown below.</p> <ol style="list-style-type: none"> 2. Be no more than 240 gross square feet. <p>Add: Be located on the driveway, in the front yard of the parcel and set at least 5 feet from the front and side property lines.</p> <p>Add: Must be on a residentially-zoned parcel of at least 8,000 square feet.</p> <p>6. Add: Dwellings sided primarily with metal, fiberglass or plastic are not allowed.</p>
Application	<p>The caregiver or relative must apply for a permit from the City. The permit application must be signed by the primary caregiver, the owner of the property on which the temporary family health care dwelling will be located, and the resident of the property if the property owner does not reside on the property, and include:</p> <ol style="list-style-type: none"> 1. The name, address, and telephone number of the property owner, the resident of the property if different from the owner, and the primary caregiver responsible for the care of the mentally or physically impaired person; and the name of the mentally or physically impaired person who will live in the temporary family health care dwelling; 2. Proof of the provider network from which the mentally or physically impaired person may receive respite care, primary care, or remote patient monitoring services; 	

	<p>3. A written certification that the mentally or physically impaired person requires assistance with two or more instrumental activities of daily living, signed by a physician, a physician's assistant, or an advanced practice registered nurse licensed to practice in this state;</p> <p>4. An executed contract for septic service management or other proof of adequate septic service management;</p> <p>5. An affidavit that the applicant has provided notice to adjacent property owners and residents of the application for the temporary dwelling permit; and</p> <p>6. A general site map to show the location of the temporary family health care dwelling and other structures on the lot.</p>	<p>3. Add: Signature of the impaired person or a person with power of attorney to allow disclosure of medical information about the person.</p>
Permit term	The initial temporary dwelling permit is valid for six months. The applicant may renew the permit once for an additional six months.	No change.
Inspection	The City may require that the permit holder provide evidence of compliance with this section as long as the temporary family health care dwelling remains on the property. The City may inspect the temporary family health care dwelling at reasonable times convenient to the caregiver to determine if the temporary family health care dwelling is occupied and meets the requirements of this section.	No change.
Revocation of the permit	The City may revoke the temporary dwelling permit if the permit holder violates any requirement of this section. If the City revokes a permit, the permit holder has 60 days from the date of revocation to remove the temporary family health care dwelling.	Allow up to 30 days to remove the dwelling after the permit is revoked.
Permit fee	Unless otherwise specified by an action of the City board, the City may charge a fee of up to \$100 for the initial permit and up to \$50 for a renewal of the permit.	
Public hearing	<p>(a) Due to the time-sensitive nature of issuing a temporary dwelling permit for a temporary family health care dwelling, the City does not have to hold a public hearing on the application.</p> <p>(b) The procedures governing the time limit for deciding an application for the temporary dwelling permit under this section are governed by section 15.99, except as provided in this section. The City has 15 days to issue a permit requested under this section or to deny it, except that if the City board holds regular meetings only once per calendar month the City has 30 days to issue a permit requested</p>	<p>The permit may be issued administratively.</p> <p>Fifteen days seems like enough time for the staff to review and approve or disapprove an application once it has been found to be complete.</p>

	<p>under this section or to deny it. If the City receives a written request that does not contain all required information, the applicable 15-day or 30-day limit starts over only if the City sends written notice within five business days of receipt of the request telling the requester what information is missing. The City cannot extend the period of time to decide.</p>	
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