

Plat, Annexation and Zoning Committee Minutes

June 8, 2011

10:05 to 11:30 a.m.

Council Chambers, 140 W. Pine

Members Present: Bob Jaffe, Ed Childers, Dick Haines, Marilyn Marler, Renee Mitchell, Stacy Rye, Dave Strohmaier, Pam Walzer, Jon Wilkins, Cynthia Wolken, Jason Wiener

Members Absent: Lyn Hellegaard

Others Present: Hilary Schoendorf, Janet Rhoades, Jenn Clary, Denise Alexander, Jim Decker, Doug Harby, Amy Fisher, Jim Betty, Jim Nugent, Mike Barton, Deni Forestek

I. Approval of Minutes

The minutes of June 1, 2011 were approved as presented

II. Public Comment on Items not on the Agenda

III. Staff Announcements

IV. Consent Agenda Items

1. Consider a request to refund a Board of Adjustment variance application fee for 628 Edith. ([memo](#))—Regular Agenda (Hilary Schoendorf) (Referred to committee: 06/06/11)

MOTION: The Committee recommends City Council approve the request to refund a Board of Adjustment variance application fee for 628 Edith.

Hilary Schoendorf explained that the applicant, Harriet Spurlock, applied for a variance for an ADU to the City Board of Adjustment in March; at that time she was denied. She returned to the Board in May for a variance for a rear yard setback and was approved. The applicant feels that she should be refunded the amount of the application fee for the first request. The amount of the fee is \$603.

Terre Meinershagen of Rocking M. Design, the applicant's representative, felt justified in requesting a refund because the first time they applied OPG indicated they would have to apply for the ADU variance and they received inconsistent information from Engineering requiring parking requirements. Had they received other info, they would have pursued the setback variance.

Doug Harby, Engineering, explained that the ordinance is unclear and open to interpretation. For the ADU variance, Engineering determined that they could not have stacked parking for an ADU, only for a family. The second time they applied for a setback variance, it was defined that there would not be a need for a parking variance, that the parking would work as proposed.

Stacy Rye wondered why the City Board of Adjustment denied the first variance but not the second. The first variance was for an owner-occupied ADU and the second was for a setback. Why was this not recommended first? The policy is to ask for the least amount of variances and with the setback, they misunderstood the parking requirements.

Stacy Rye made the motion to refund the application fee.

Questions on motion:

- Was the recommendation based on false or incorrect information? OPG thought that two variances would be required for the setback option: one for the setback, one for the parking. They were given incorrect information regarding the parking.
- Where would the refund come from? From the general OPG budget.
- Pam Walzer suggested that they view this as a learning experience and that the refund should come from the City Council Contingency Fund.
- Jason Wiener wondered if there should be an amendment to Title 20 to make sure this does not happen again. Denise Alexander, OPG Senior Planner, did not think that would be feasible; this situation was unique and was not avoidable.

The motion passed by majority vote, with Mitchell, Wilkins and Jaffe voting against.

Mr. Jaffe asked the people who voted against the motion if this could go on the consent agenda. They did not object. This motion will appear on the consent agenda.

2. Consider a request for a preliminary plat extension for River Road Lots Subdivision. ([memo](#))—Regular Agenda (Janet Rhoades) (Referred to committee: 06/06/11)

MOTION: The Committee recommends that City Council approve the extension request for the River Road Lots Subdivision preliminary plat period by one year, to a final plat submittal deadline of May 18, 2012.

Janet Rhoades reported this 3-lot subdivision on .88-acre property is located at 2311 River Road just west of Luella Lane in the South Riverfront neighborhood. It was approved May 18, 2009, with an expiration date of 5/18/11. The owner of the property is requesting a one-year extension with no changes to the design.

Jon Wilkins made the motion to extend the preliminary plat approval period by one year.

The motion was unanimously approved.

V. Regular Agenda Items

3. Request for a Conditional Use for 2404 39th Street Birth Center. ([memo](#))—Regular Agenda (Janet Rhoades) (Referred to committee: 06/06/11) **HELD IN COMMITTEE**

Janet Rhoades reported on this request to convert the detached garage on the site to offices and a waiting area. There would be no changes to the size or footprint of the buildings. Since a birth center is not a specified use in the Title 20 zoning code, the Office of Planning and Grants determined that the closest use would be Medical Office Use.

This is an information item, no action is expected to be taken by the Committee.

Questions and comments:

- This is an excellent use of the existing garage.
- Does the conditional use go with property? It does as long as the owner stays with the development plan; if they expand, they will have to come back in for another Conditional Use.

Jim Decker, of Decker & Sutherland, explained that the garage would be remodeled to include a waiting area with a rest room, increased parking, and two offices for the administrative staff so that the main building can maintain a homelike atmosphere. They will tie in the accessibility ramp to a sidewalk that extends along the parking area to the street. They will also increase the parking area so that clients will not have to back into the street.

Some Committee members felt that the parking seemed excessive and wondered if there was a way for Council to add a condition to reduce the number of parking spaces. Ms. Rhoades will research this and let City Council know what she finds out.

4. An [ordinance](#) to rezone property located at 1500 39th Street. The property is currently zoned RM1-35 (Residential, 43 multi-dwellings per acre) and RT2.7 (Residential, 16 dwellings per acre) and if approved the property will be zoned to B1-1 (Neighborhood Business) and RM1.5 (Residential, 29 multi-dwellings per acre). ([Memo](#)) ([PAZ](#))
(Returned from Council floor: 06/06/2011) **HELD IN COMMITTEE**

This item was sent back to PAZ to address issues related to the protest counts. Mr. Nugent advised OPG that the legal protest would need to be separated by zoning based on case law. Since the legal protest was not submitted that way, Ms. Rhoades requested a delay for clarification purposes.

Questions and Comments from the Committee included:

- What is the normal length of time given for people to protest a rezoning? The zoning statute doesn't specify any time period within which to file a protest.
- Were the four Neighborhood Councils in that area notified? The property is within the Southgate Triangle and they were notified in March.
- Commercialization of this corner is a concern. The area around this project is all residential. There already is commercial in this area, although it's legal nonconforming.
- This project might increase the traffic of this corner. That area is already hostile for pedestrians and bicyclists.
- Would OPG help the Council with Findings of Fact for either side of the argument? Janet Rhoades asked Committee members to contact her with any questions, concerns or suggestions.

Public Comment included:

- Jennifer Clary, the developer's representative, commented that Sarah Melville withdrew her protest. She pointed out that in the developer's packet there are 21 pages of those who support the project because they do not want to have to cross Russell Street to get to services.
- Jeff Stevens, a member of the South 39th Street Neighborhood Council Leadership Team, felt that since this proposed rezoning lies at the intersection of four neighborhood councils—the South 39th Council, the Southgate Triangle, the Lewis & Clark, and the Farviews Neighborhood Councils—it would have been prudent to notify them in order to give them an opportunity to respond as they saw fit. Their leadership team regards this as a significant and troubling failure of their early notification process and intend to see that it is addressed by OPG, the Community Forum and the City Council. The potential rezoning commercialization of the 39th Street residential corridor is a matter of great concern and interest to them.

The Committee asked that the four Neighborhood Councils in the area be notified. The Committee would like to renotice the properties within 150 feet of both proposed rezoned parcels. This renotice should be by first-class mail. The Committee will schedule this matter after giving the residents time to reply.

VI. Items to be Removed from the Agenda

VII. Held in Committee or Ongoing in Committee

1. Annexation. (see separate list at City Clerk's Office for pending annexations) (Ongoing in Committee)
2. Request to rezone the property legally described as Lot 3 of Scott Street Lots Subdivision, located in Section 16, T13N, R19W, P.M.M. form D (Industrial) to I-1 (Light Industrial), based on the finding of fact and conclusions of law. (PAZ [05/21/08](#)) (Returned from Council floor: 6/2/08)
3. Ongoing discussion of City planning issues with members of the Planning Board.— Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
4. Resolution repealing resolution No. 7404 and declaring the annexation of Lots 53 and 54 Dinsmore's Orchard Homes No. 5 null and void. ([memo](#))—Regular Agenda (Jessica Miller) (Referred to committee: 01/10/11)
5. Resolution to annex and incorporate within the boundaries a certain parcel of land described as Linda Vista 12th Supplement, and zone the property Miller Creek View addition planned unit development with the underlying zoning of R-215 residential in the city all located in Section 13, Township 12 North, Range 20 West, P.M.M. ([memo](#))— Regular Agenda (Jessica Miller) (Referred to committee: 04/11/11)
6. A resolution to adopt the 2011 Missoula Active Transportation Plan as an amendment to the Missoula County Growth Policy and set a joint public hearing with the Missoula County Board of County Commissioners to review the Plan. ([memo](#))—Regular Agenda (Ann Cundy) (Referred to committee: 05/09/11)
7. Ordinance amending the text of the Southside Riverfront Neighborhood Character Overlay as described in Section 20.25.060 of the Title 20 Missoula City Zoning Ordinance. ([memo](#)) – Regular Agenda (John Newman)
8. Ordinance to rezone certain properties to be included in the Southside Riverfront Neighborhood Character Overlay as described in Section 20.25.060 of the Title 20 Missoula City Zoning Ordinance. ([memo](#)) – Regular Agenda (John Newman)

VIII. Adjournment

The meeting adjourned at 11:25 a.m.

Respectfully Submitted,

Deni Forestek

Recording Secretary
Office of Planning and Grants

The recording of these minutes is available in the City Clerk's Office (for up to three months after approval of minutes). These minutes are summary and not verbatim.