

Plat, Annexation and Zoning Committee Minutes

November 9, 2011

10:35 a.m.

City Council Chambers, 140 W. Pine Street

Members Present: Bob Jaffe, Ed Childers, Lyn Hellegaard, Marilyn Marler, Renee Mitchell, Stacy Rye, Jason Wiener, Cynthia Wolken

Members Absent: Dick Haines, Dave Strohmaier, Pam Walzer, and Jon Wilkins

Others Present: Jen Gress, Ana Aronofsky, Steve Adler, Laval Means, Tom Zavitz, Jim Nugent, Amy Fisher, Steve Maler, and Bobbi Day

I. Approval of Minutes – the minutes of [November 2, 2011](#) were approved as presented.

II. Public Comment on Items not on the Agenda

Steve Maler was concerned about the economic impact on decisions made by City Council. He wanted to hear more discussions about economic impacts.

III. Staff Announcements

IV. Consent Agenda Items

A. An ordinance to amend Title 20 City Zoning Ordinance to incorporate text amendments to Section 20.45.020 entitled "Parcel and Building standards in Residential Districts".
([memo](#))—Regular Agenda (Jen Gress) (Referred to committee: 11/07/11) **REMOVE FROM COMMITTEE**

MOTION: The Committee recommends that City Council set a public hearing on an ordinance to amend Title 20 City Zoning Ordinance to incorporate text amendments to Section 20.45.020 entitle "Parcel and Building standards in Residential Districts".

Jen Gress explained that after having reviewed a Board of Adjustment case in their neighborhood, the Pleasant View Homeowner's Association realized there were a large number of detached accessory structures in their neighborhood that probably did not meet zoning setbacks. They requested staff to review their zoning district for possible changes. OPG staff found that changing the language would benefit the entire city and City Council agreed to forward the amendment to Planning Board.

Planning Board discussed the proposed amendment on November 1, 2011 and recommended staff's changes to City Council. The recommendation was that accessory structures that did not exceed 120 square feet and did not require a building permit would not require a zoning compliance permit. The placement of those structures would still have to meet front and street side setback requirements and would not be allowed to exceed 50% coverage in the rear yard.

Ed Childers made the motion that City Council set a public hearing on December 5, 2011 to amend Section 20.45.020. The motion passed unanimously. This item will be on the Consent Agenda.

B. Discuss clarifications to the regulations for non-conforming uses and structures in Title 20, Missoula City Zoning Ordinance, especially pertaining to 20.80.040 Nonconforming Uses, 20.110.050 C3 Exceptions to Side Setbacks, and 20.80.030 Nonconforming Structures. ([memo](#))—Regular Agenda (Tom Zavitz) (Referred to committee: 08/22/11)
REMOVE FROM AGENDA

MOTION: The Committee recommends that City Council forward staff's recommended changes (with options) to the nonconforming uses and structures in Title 20, Missoula City Zoning Ordinance, especially pertaining to 20.80.040 Nonconforming Uses, 20.110.050C3 Exceptions to Side Setbacks, and 20.80.030 Nonconforming Structures to Planning Board for its recommendation.

Tom Zavitz provided three options pertaining to expanding nonconforming one and two unit residential structures horizontally along the nonconforming setback line ([presentation](#)):

- Option 1 – keep the current language which was fully permissive;
- Option 2 (staff recommendation) – allow expansion in the setback that zoning would allow limiting the expansion up to 50% of the current building and administrative review for additions of more than 50%; or
- Option 3 – allow the expansion but under Administrative Adjustment review.

Option 2 would allow a building that was 40 feet long to expand by 20 feet and expansion within 3 feet of the property line would require Administrative Adjustment review.

Committee discussion:

1. Option 2 might make it harder to expand since it would limit some expansion. The building might end up looking different from what was currently in place.
2. Height was a significant issue but horizontal development did have some issues that needed clarification.
3. The reason for this discussion was to help preserve old, historic buildings that had their own uniqueness.
4. Would the 50% rule cover the majority of applications that would be submitted? OPG receives about 10 or 12 applications per year that use the exception to expand within the setback. Most of them would be covered by the 50% rule but not all of them.
5. In the long run this change could be problematic if someone built to the 50% allowance and then came back later with another addition.
6. Limit the addition size so it was not bigger than the building envelope if the building were conforming. This would prevent the building being wider or deeper than other buildings that were conforming.
7. The point of this discussion was to limit the impact on neighbors but still allow for limited expansion.
8. If a review process were required, standards should be applied to that review.

Jason Weiner made a motion to forward Option 2 to Planning Board. After further discussion, he amended his motion to include the creation of an envelope option; if expanding in the setback it could only be extended to the point that was allowed by zoning (in the opposite setback). Chair Jaffe suggested that some options be forwarded to the Planning Board so it would have more to consider. Councilman Weiner agreed to sending all the options without Council preference.

Steve Adler advised the Committee to start tackling this issue with the height and how it affected neighbors. It was easy to protect views into yards with fences and hedges but when going up in height, there was no protection of that view space. He suggested going to some board of adjustment rather than implementing a perpetual easement (this could be more onerous on the neighbors). Mr. Adler was concerned with adding a new definition for instance, "material and detrimental". Try to stick to with what was easily quantifiable.

Building codes and zoning should be handled through Title 20. He suggested looking at height and bulk first. How much area could be taken up and make it a percentage. Keep it simple. (Note: the access easement would only apply if the expansion were within 2 feet of the property line and would be for the addition.)

Height discussion – there were three options for adding height onto a nonconforming structure:

- Option 1 – most restrictive, would have to meet current setbacks;
- Option 2 – allow a small addition of height such as to add a foundation, add a small architecture feature. Allow 3 feet in height to be added; or
- Option 3 – allow to go up to 35 feet or the maximum height of the zoning district in most residential areas.

Discussion:

1. There would be some instances that flexibility would be needed such as to change the pitch of a roof or add a foundation. Three feet was enough to allow for these situations but not enough to impact the neighbor.
2. In Option 3 the addition could be move to the right and still meet what was allowed by zoning.
3. Administrative Adjustments offers an avenue for neighbors to comment; these were good options that addressed the neighbor impact issue.
4. Lot line standards would work here because there was an Administrative Adjustment component.

Steve Adler was concerned with Option 1 and 2 because he did not want to see buildings designed by zoning. The impact to the neighbor was when one of these buildings loomed over their living space. Increasing the vertical height did impact the neighbor. The distinction to make was with the position on the building on the lot.

Uses discussion to clarify that expanding a one or two unit dwelling did not constitute an expansion of use. Suggested language change would show that the expansion of the units would be allowed but the expansion of the number of units would not be allowed. The expansion would comply with all other applicable zoning regulations.

Commercial nonconforming uses could currently expand within the building through an Administrative Adjustment or a variance.

Expiration of abandonment:

- Option 1 – leave at one year;
- Option 2 – Lengthen to two years for all use types; and/or
- Option 3 – remove the abandonment time limit for residential accessory dwelling units.

Enforceability discussion for owner occupied units.

1. Could not enforce unless there was a legal complaint. Have to gather facts if there was a complaint.
2. The owner must prove the units previous use when they want to remove the abandonment.
3. Current ADU rules allow an apartment in a house if the owner occupies the structure.

Chair Jaffe recommended moving the whole package as presented by staff with options to the Planning Board and the Committee could make specific amendments when it came back. Marilyn Marler made a motion to forward the proposed amendments with options to Planning Board. The vote was unanimous. This item will go on the Consent Agenda.

V. Regular Agenda Items

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: 01/10/2011)
5. Amendments to Article 3, Subdivision Design Standards, Section 3-020 Streets, Access, and Transportation, of the Missoula City Subdivision Regulations. ([memo](#))—Regular Agenda (Tom Zavitz) (Referred to committee: 10/24/11)
6. Amendment Article 7. Error Corrections and Adjustments to the subdivision regulations to allow for restrictions or conditions placed on a plat by the governing body to be amended or removed by a future council. ([memo](#))—Regular Agenda (Lyn Hellegaard) (Referred to committee: 11/07/11)
7. Confirm the appointment of Sandy Mitchell to the City Board of Adjustment as second alternate for a term commencing immediately and ending June 30, 2014. ([memo](#))—Regular Agenda (Mayor Engen) (Referred to committee: 11/07/11)

VIII. Adjournment

The meeting adjourned at 12:00 noon

Respectfully Submitted,

Bobbi Day
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.