

Plat, Annexation and Zoning Committee Minutes

April 18, 2012

10:05 a.m. to 12:00 (Noon)

City Council Chambers, 140 W. Pine Street

Members Present: Bob Jaffe (Chair), Ed Childers, Caitlin Copple, Dick Haines, Adam Hertz, Marilyn Marler, Mike O'Herron, Alex Taft, Jason Wiener, Jon Wilkins

Members Absent: Cynthia Wolken,

Others Present: Paul Bohan, Steve Grover, Lee Clemmenson, John Snively, Mike Barton, Mitch Doherty, Jim Nugent, Tom Zavitz, Laval Means, John Hendrickson, Jen Gress, Deni Forestek

I. Approval of Minutes of April 4, 2012. The minutes were approved as presented.

II. Public Comment on Items not on the Agenda

Paul Bohan asked that the comments he made at the March 21, 2012 PAZ Committee meeting be corrected. He would like the first line to read that he "understood that zoning is a promise to the citizens of what is going to happen in their neighborhood. He would also like the words "...in his neighborhood" be struck. OPG Staff will make these changes and republish the minutes.

III. Staff Announcements

IV. Consent Agenda Items

V. Regular Agenda Items

1. Remove impediments to affordable housing development in Missoula: revise accessory dwelling unit provisions. ([memo](#))—Regular Agenda (Alex Taft) (Referred to committee: 03/12/12) **REMOVE FROM AGENDA**

MOTION: That the Committee recommend that City Council direct OPG Staff to draft an amendment revising the accessory dwelling unit provisions of Title 20 with the following provisions and that the amendment be referred to the Planning Board for review. Revise chapter 20.45 Accessory Uses and Structures to allow ADUs by right in all zoning districts that allow residential uses where one of the dwelling units is owner-occupied; revise chapter 20.60 to reduce required parking to 1 parking space for a second primary dwelling unit on a parcel that contains no more than two dwelling units, totaling 3 required parking spaces for the two units. This would apply to two single detached units or a two-unit house. And that this be initiated as a text amendment to Title 20 and that that be a Finding of Fact and Conclusion of Law in the Staff Report.

Jon Wilkins moved to table the discussion. He felt that this is a controversial subject and cited Mr. Nugent's opinion of April 22, 2009. Mr. Wilkins felt that this Opinion pointed out that this action would indicate a rezoning process should be followed, which would mean the City would have to send out notifications to home owners, and would need posting in all districts. He felt with the City experiencing a tax hike, the cost would be prohibitive.

Discussion on the motion by the Committee:

Jason Wiener felt that Mr. Nugent's opinion indicated that City Council needed to determine whether they would treat this as a text or a map amendment. He was comfortable with considering this action an amendment to the text of the Ordinance. Mr. Haines felt that Mr. Wiener's interpretation was incorrect. Mr. Hertz asked Mr. Nugent to clarify his Opinion and whether this action would mean official notification would need to be done.

Mr. Nugent pointed out that the Legal Opinion they referred to happened three years ago and that the Judge in the court case leading up to the Title 20 project did indicate it was a general text amendment. The difference between text amendment and map amendment comes down to the extent of required notification. He felt it would be premature to cut off debate at this time. If the City Council decided to proceed, they had to decide which type of notice applied. City Council can also decide to write a clarification in the amendment section of the zoning Ordinance to further address when text or map amendments apply.

Alex Taft opposes the motion and would like to see a clarification of the requirements per Jim Nugent's suggestion.

Public comment on the motion:

Paul Bohan cited an example where the judge basically said they can sue later; he felt the legal process was getting more warped.

John Snively supports the motion to table because functionally the proposal on the table is clearly a change in zoning.

Lee Clemenson just received Mr. Nugent's opinion and since she felt it should be part of the record, she read parts of it aloud ([See this link for the Opinion](#)). She felt that this action was a rezoning and a remapping of the area. She felt that this was stripping the property rights of the people. This should require a legal ad, posting, notification and consideration by the super-majority to succeed. She has contacted attorneys who agree with her and cautioned that this could be very messy, very expensive, and political suicide. She supports the motion to table it and put it to the vote of the people.

Steve Grover requested the Committee to deny the motion to move forward with an actual discussion.

Mr. Wilkins raised a point of order that the motion was about tabling discussion and there would be further discussion after the vote.

The motion failed with Marler, Copple, Hertz, Taft, Wiener and Jaffe opposing.

Chair Jaffe asked for the Staff Report; Mr. Wilkins felt the Committee needed to clarify whether this was a map amendment or not. Ms. Marler felt the staff report would be helpful in their decision whether or not it was a text or map amendment.

Jen Gress gave a [presentation](#) outlining the current regulations for accessory dwelling units and potential revisions of the regulations to allow ADUs by right in all zoning districts that allow residential uses where one of the dwelling units is owner-occupied. The second part of the referral reduces required parking to 1 parking space for a second primary dwelling unit on a parcel containing two primary dwelling units, totaling 3 required parking spaces for two units.

Comments and questions:

- Mr. Wilkins asked how the City would enforce the owner-occupancy regulation. He cited a memo from Mr. Nugent that said owner occupancy cannot be enforced because that would be illegal. Mr. Nugent clarified that the memo was in reference to an idea to eliminate rental units by making all residences owner-occupied. With respect to ADUs, right now Title 20 states that one of the dwelling units have to be owner-occupied; this is a different factual circumstance and it's already been adopted and is legal.
- Mr. Taft felt owner occupancy would ensure that the owner has control of the property. He cited a research study he did in Boston about owner occupancy. The benefits are less crime, better upkeep of properties, less traffic problems, and other benefits. The

owner-occupancy requirement will be met with deed restrictions and enforcement would be complaint-driven. He noted that Washington State also includes a requirement for annual reporting of accessory dwelling units to ensure the owner occupancy is retained.

- Mr. Wilkins felt that single family neighborhoods already were less crime-ridden and felt that complaint-driven enforcement would create problems among neighbors.
- Chair Jaffe wondered how a deed restriction would be removed from an existing property if the buyers did not want to have an ADU or wanted to rent out both dwellings. Ms. Gress explained that the landowners would have to remove the parts of the ADU that made it a separate dwelling unit. If they wished to remove the deed restriction, they would have to petition the governing body to do so.
- Mr. Wiener felt as a renter he was being singled out as a poor, crime-ridden person who is going to make your neighborhood a bad place to live. Mr. Wilkins has nothing against renters, he was concerned that this was changing zoning from single to multi-family by allowing ADUs.
- Ms. Copple thinks that design standards for ADUs would be great since there are some ADUs in neighborhoods that do not meet the minimum requirements. She did not like the idea of placing the onus of enforcement on the neighbors. She wished to hear more public comment on the pluses and minuses of ADUs.
- Chair Jaffe felt that the building permit process would guide the standards. He felt the stories of bad examples of ADUs not meeting minimum standards were due to someone building an ADU without the proper permits or the development actually is not an ADU but a permitted second primary unit that doesn't trigger design standards. Chair Jaffe wondered if it was illegal to make landlords register their units. Ms. Gress stated that you are allowed to license structures, not people. Mr. Nugent explained that at one point there was an effort to try to license every rental unit and the landlord association sued to have that ordinance struck down. A deed restriction would not be a license, it would be a covenant that runs with land, the covenant cannot be revoked without governing body approval.
- Ms. Copple would like to hear specific testimony from neighbors or Councilors about how this is harming the neighborhood. Chair Jaffe agreed. Ms. Marler was in support of the owner occupancy rule, not because renters have to be sat on but because it helps those owners to pay off their mortgage and make housing affordable. She, also, would like to hear public testimony on how they are bad for the neighborhood.
- Mr. Childers hoped that there will be design standards to help those people living in substandard or illegal ADUs with poor ventilation, no egress windows, or unsafe conditions.
- Mr. Haines felt that ADUs added density to a neighborhood thereby changing its character. He felt there were so many unoccupied houses in Missoula at a low cost. He did not feel this was necessary. Low cost rental housing can be subsidized by Missoula Housing Authority or other organizations. He stated that people in the single family districts want their investment safeguarded and felt that this would degrade the value of their homes.
- Mr. Taft pointed out that one other benefit in his study was rental cost was substantially less when one house is owner-occupied. He mentioned an example of a family who had to move because they had no option to lower their housing cost because ADUs were illegal in their neighborhood.
- Mr. Wilkins felt that the reason Ms. Copple has not heard testimony from a lot of the public against this is because it has not been advertised; he felt that once word got out, the meeting will be packed with protesters.

Jason Wiener made the motion to direct OPG Staff to draft an amendment revising the accessory dwelling unit provisions of Title 20 with the following provisions and that the

amendment be referred to the Planning Board for review. Revise chapter 20.45 Accessory Uses and Structures to allow ADUs by right in all zoning districts that allow residential uses where one of the dwelling units is owner-occupied; revise chapter 20.60 to reduce required parking to 1 parking space for a second primary dwelling unit on a parcel that contains no more than two dwelling units, totaling 3 required parking spaces for the two units. This would apply to two single detached units or a two-unit house. And that this be initiated as a text amendment to Title 20 and that that be a Finding of Fact and Conclusion of Law in the Staff Report.

Discussion on the motion:

- Mr. Wiener felt that this was absolutely about renters; there is a 3% vacancy rate; there were not a host of opportunities for housing in Missoula, there was a significant gap between income and the cost of a rental unit and the way to change this is to increase the amount of rental units. He cited public comment from the March 21, 2012 minutes by those in favor of the amendment. He would also like to see the regulations address existing ADUs so that they can be brought up to standards.
- Mr. Hertz would not support the motion. He felt that affordable housing did not have to be subsidized, it's the result of market, regulation, building standards, tax structure, and land availability. We are living in a difficult economy and we need to get the University to build affordable housing for students; he does not feel that one unit here or there will help, we need to talk about a comprehensive housing overhaul.
- Ms. Marler agreed with a lot of things Mr. Hertz said about affordable housing; however, she will support the motion so that conversation can continue. An issue does not get out in front of the public until it hits a certain trigger, and the Planning Board is one of those triggers.
- Mr. Wilkins felt the amendments were not ready to go to Planning Board and felt that they needed to address whether this was a map or text amendment.
- Mr. Haines asked the chair to postpone the vote until he could read the motion and get feedback from other people. Mr. Wiener pointed out that the motion he made was from the referral and the referral was published in March.
- Chair Jaffe would like the Committee to vote and perhaps postpone the City Council discussion.
- Mr. O'Herron would like to see a map of those neighborhoods that would be affected in Ward 5 to see where there are covenants that would prevent the ADUs from occurring. He felt this issue has a big impact on people and he would like them to be informed. He would also like to hear from professional associations. Chair Jaffe explained that the Planning Board was there to take public comment and decide how to proceed. The City Council would hear this issue again before a decision is made.
- Mr. Hertz would like to compromise as they did in Polson where ADUs require a special use permit that allows the neighborhoods to weigh in.
- Mr. Wiener pointed out that in his motion he directed staff to initiate this action as a text amendment since this does not change the map, but the plain language of the ordinance and would be constant to all districts. He would argue that unless you take a very restrictive notion of what a substantive change is you could not possibly constitute this as a map change.

Public comment:

- Paul Bohan felt this was a density and people density issue; he felt this was giving some people something and taking from others. Saying this was a text amendment there's nothing you can say that's not a text amendment, this is just changing the words and he's seen that happen too much. When some residents bought their houses, the zoning said there would be no accessory dwelling units, they were not allowed. The people who want to have accessory dwelling units that bought these houses knowing that they weren't going to be there, they knew what they were buying into. So what you're doing

when you're changing the zoning, you're giving some people something and taking something from somebody else.

- John Snively, who lives in the University area, said that when Title 20 was updated, single family areas were not allowed to have ADUs. Making a change like this without allowing public comment and conducting broad notification was wrong. He felt that broad notification should occur. People bought their homes with the understanding that single family neighborhoods would stay that way. It's absurd to think this will address affordability when only a few have occurred so far. To build an ADU would cost money, which needs to be returned in rental income. Rents will be determined by market forces. ADUs are being proposed in the densest part of the community including his neighborhood. Lessening the parking requirement on the second unit will make it a bigger problem. He urged protection of neighborhoods that have been designated as single family. You are not going to be able to enforce owner occupancy and it is unfair to put the burden of complaints on the neighbors.
- Lee Clemmenson felt that this was a change in zoning because it is not a text change, it's changing a neighborhood from single to multi residential. She asked the Committee to make sure they do not have a formal vote in the summer when people are out of town and unaware; if it cannot be completed by June, they should bump it until September. If people build ADUs in their backyard and pave it over for parking, there will be no more green areas in Missoula. She cited others that believe crime rates will go up with ADUs and alleys will be impacted. She had spoken to a former OPG employee who said that the bottom line is that this is about making money and accommodating University students.

The motion passed with Wilkins, Copple, Haines and Hertz voting against.

VI. Items to be Removed from the Agenda

V. Held in Committee or Ongoing in Committee

1. Annexation. (see separate list at City Clerk's Office for pending annexations) (Ongoing in Committee)
2. Ongoing discussion of City planning issues with members of the Planning Board.—Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
3. 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 (Jon Wilkins) (Referred to committee: 11/07/11)

VI. Adjournment

The meeting adjourned at 12:03 p.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.