

## Plat, Annexation and Zoning Committee Minutes

May 23, 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, Jason Wiener, Jon Wilkins,

**Members Absent:** Alex Taft, Cynthia Wolken

**Others Present:** Jim Nugent, Tom Zavitz, Jen Gress, Laval Means, Paul Bohan, Mike Barton, Jerry Ballas, Jack Reidy, Amy Fisher, Shantelle Gaynor, Lee Clemmensen, Deni Forestek, and Nina Cramer

**I. Approval of Minutes of May 16, 2012.** The minutes were not approved since there was not a quorum present at that time.

**II. Public Comment on Items not on the Agenda**

Jack Reidy thanked the City Council for the nice card he received while recuperating from a broken shoulder in the hospital. He is against ADUs because they trash neighborhoods and were not good for the whole town; he will speak at the public hearing.

Paul Bohan wanted to reiterate the purpose of zoning, which is to provide opportunities for people raising families to have an area in relative tranquility without commercial zones and competing interests. When zoning was platted out it was for families to live, not to have a structure to raise money; people have become greedy and homes became commercial properties. In other cities, they tax secondary residences differently than primary residences. One way to have affordable housing is to make it more expensive to rent places out so that the homes are more valuable as homes. Missoula has always had a shortage of affordable housing, especially for students, a transient population, because people buy them up for rentals. To him, landlords have dictated the zoning and Title 20 was more of a landlord approval act than for people who live here.

Jerry Ballas felt that the average citizen would not know what the issues are just by reading the agenda of the upcoming meeting. The agenda posted for this meeting has two discussions on Title 20, one on how to change the Ordinance and the other on notification. What they are really talking about is ADUs and how to change the notification to the general public on how ADUs are being approved. He thought the Legislature would frown on this.

**III. Staff Announcements - None**

**IV. Consent Agenda Items**

1. An ordinance amending Title 20, City Zoning Ordinance, as recommended by the Missoula Consolidated Planning Board, and shown in Proposed Amendments to Nonconformities 20.80 and Measurements and Exceptions 20.110 of the Missoula City Zoning Code Attachment A. ([memo](#))—Regular Agenda (Tom Zavitz) (Referred to committee: 05/21/12) **REMOVE FROM COMMITTEE**

**MOTION: The Committee recommends that City Council set a public hearing for June 25, 2012 to adopt an Ordinance amending Title 20, City Zoning Ordinance, as recommended by the Missoula Consolidated Planning Board and shown in Proposed Amendments to Nonconformities 20.80 and Measurements and Exceptions 20.110 of the Missoula City Zoning Code Attachment A.**

Tom Zavitz explained that this was a request to set a public hearing for proposed revisions to Title 20 Nonconformities and Measurements and Exceptions. He gave a [presentation](#) on what had been done on this subject by both the Committee and the Planning Board. The original goals were to look at nonconforming language with regard to repairing, maintaining, and replacing nonconforming uses and structures to provide owners with greater certainty as how to repair or improve residences and give them more reasonable timeframes to manage their properties. The issues that were sent to Planning Board were to clarify setbacks, clarify expansion of certain residential nonconforming uses, increase the abandonment time limit for loss of nonconforming use and structure status to two years, and replacement of nonconforming structures.

The Planning Board amendments included:

- One and two unit nonconforming residential dwelling unit expansions can expand vertically to the height of the current zoning district and up to 16 feet horizontally.
- Expansion of nonconforming structures closer to the property line than three feet or closer than five feet in zones R5.4, RT5.4, R8, and R10 and horizontal expansions exceeding 16 feet require Design Review Board (DRB) approval.
- Additions to floor area or footprint of nonconforming one and two unit principal residential dwelling units do not constitute an expansion of use.
- Extend abandonment time limit from one year to two years for all nonconforming uses.
- Nonconforming structures that currently may be replaced with the same encroachments as the existing structure without loss of nonconforming status must now receive review and approval from the DRB.
- Extend time limit for obtaining a building permit from 12 to 24 months for replacement of a nonconforming structure from the date the structure is removed or demolished.

Questions and comments included:

- What is the difference between DRB and BOA review? When a proposal goes before the Board of Adjustment, the applicant must prove a hardship; DRB criterion is different and relies more on design.
- Mr. Wilkins asked for clarification of the height expansion—did this mean that one could increase the height of their structure up to the maximum height requirement in the zoning district if they were within the setback? Yes, if the structure is within the setback but no closer than 3 feet to the property boundary or 5 feet in zones r5.4. RT5.4 R8, or R10. if closer, they would have to go to DRB for approval which would bring in comment from neighbors and review criteria.
- Mr. Wilkins said his goal was to keep the footprint and expanding vertically to the maximum limit did not meet his goal; he would rather they can only go to the height of what was there originally. Chair Jaffe agreed that this was closer to what Committee sent to the Planning Board.
- Chair Jaffe felt that this could be discussed at the public hearing and should be sent back to the Committee. He would like to adjust the height limit to be closer to what they wanted, originally.
- Mr. Haines wondered if going before the DRB would mean they would be granted the right to do this. Mr. Zavitz stated the DRB could say no if the design did not meet the criteria. Mr. Haines felt this was unclear; Mr. Zavitz explained that right now the structure can be replaced without DRB approval, the proposal ~~this~~ adds a little bit more review to the process and it is no longer a right. Mr. Haines felt it needed revision to make it clearer.
- Mr. Wilkins felt that the first paragraph contradicts the second because adding height does not keep the footprint. Chair Jaffe explained the footprint refers to horizontal expansion.

- Mr. Wilkins wondered if the DRB was an advisory board. Mr. Zavitz said the DRB was a decision-making board; DRB looks at design, character, and if the structure is in the best interest of the public.
- Mr. Wilkins wondered if they could ask for an extension if building is not done within two years; he had experience with constituents who could not build his new home on the footprint of a nonconforming structure because he cannot sell his present home. Mr. Zavitz felt that they could ask for an extension through a variance; he did not know if there should be another extension process through the DRB.

Mr. Wiener made the **motion** to set the public hearing for June 25, 2012. He agreed that it seemed strange that when rebuilding a structure in the same place DRB approval was needed but the height of an extension could be raised by right. It seemed odd and he wanted to discuss this at the public hearing.

Questions and Comments on the motion:

- Mr. Wilkins pointed out that in his area there are a lot of nonconforming structures that were old stock and needed updating; his idea was they should have a method of fixing these structures up and keeping the footprint, but increasing the structure to the height maximum did not keep the footprint. He wanted to send it back to the Planning Board.
- Ms. Marler felt a public hearing was necessary for the process; the Planning Board is an advisory committee and the Committee could make changes. She did not feel it was necessary to send it back to Planning Board.
- Mr. Childers felt the Planning Board missed the point in some respects and he was in favor of a public hearing.

Public Comment:

Lee Clemmensen was glad to hear the Committee was going to reconsider some points; she felt it needed to be in compliance with the Growth Policy which considered character of neighborhood as well as requirements for light and air.

The motion passed unanimously. Chair Jaffe asked that it be placed on the Consent Agenda.

## V. Regular Agenda Items

1. Ordinance amending Title 20 to clarify notification procedures for zoning amendments. ([memo](#))—Regular Agenda (Laval Means) (Referred to committee: 05/21/12) **REMOVE FROM COMMITTEE**

**MOTION:** The Committee recommends that City Council direct OPG staff to draft an amendment revising Title 20, chapter 20.85.040 and 20.85.050 to revise notification procedures for all types of zoning amendments and that option 3 be referred to the Planning Board for review.

Jon Wilkins wanted to go on record that he felt it was a mistake to discuss this topic at this time. He felt they were trying to change something in the middle of a heated debate on ADUs; this topic would be more appropriate after the debate was done. He felt that this set the precedent of not being transparent.

Jen Gress with the Office of Planning and Grants gave a [presentation](#) on clarifying notification procedures for zoning amendments in Title 20. She explained the four options that OPG Staff had prepared for the Committee to consider.

The four options were:

- Option one indicates a potential clarification to the text amendment section that identifies amendments pertaining to accessory or conditional uses as a form of text amendment.

- Option two combines the two processes (text and map amendment) and proposes that certified mailing and posting will happen when projects are 150,000 square feet or less. This is approximately one city block in size or smaller.
- Option three combines the two processes as well and triggers the certified mailing and posting upon section 20.85.040A.2 (for property owner requested projects).
- Option four reflects State law, also combining the two processes and simplifying the notification even further by not requiring a mailing or posting for any zoning amendments. This option treats text and map amendments the same with the same State required notification process – legal advertisement 15 days before the public hearing.

Questions and comments included:

- Mr. Wilkins asked what this had to do with ADUs: is this a map change or a text change. Ms. Gress explained that this was discussing how the City would notify future changes like the ADU process. Mr. Wilkins felt that topic was related to the ADU topic. Ms. Gress felt that ADUs would be looked at as a text amendment with all 4 options because it would be a city-wide change to text. Mr. Zavitz added that a map amendment was the changing of a boundary of a zoning district whereas a text amendment was a change to the text.
- Mr. Wiener felt that this subject came about as an attempt to avoid a lawsuit. He felt that the ADU topic was clearly changing text and therefore a text amendment; he did not feel that discussion of this topic was necessary. However, he preferred Options 2 and 3 because both provide a hard and fast line that would stand up to any kind of scrutiny; of those, Option 3 was superior because City Council was accountable. Option 1 was helpful because it was trying to delineate the line between a text and a map amendment to flesh out the difference; an alternative would be to add definitions that robustly defined what was a text amendment and what was a map amendment to keep the procedure the same. He did not think it would be as hard and fast a line or as defensible.
- Ms. Copple wondered if it was a cost or staff time burden to provide notification. Chair Jaffe responded that although cost was a factor, Council was trying to have a zoning code that allowed for some flexibility. Consideration needed to be given to barriers for changes. Although some would like the zoning code to be unchangeable, the City needed to be able to make changes when necessary. The cost of notification for everyone in the City, no matter how small a change, could be over \$100,000.
- Chair Jaffe felt that using the concept of text or map was not the right dividing line. Option 3 was based on who initialized the amendment. If the property owner initiated then there was certified mail and posting. If the City Council initiated then the degree of outreach could vary depending on the scope. City Council would have many more tools at its disposal for notification and did not necessarily have to be limited to the one way - certified mail.
- Ms. Copple felt that Option 3 would keep the flexibility of notification for uncontroversial text amendments but have triggers in place so that could be broader notification if warranted.
- Mr. Haines felt that Option 3 was what the Committee was after; however, he did not like the fact that the property owners would be responsible for the notification and this would impact them unnecessarily. He felt that there needed to be a notification process regardless of whether it was a property owner initiated project or a City Council project.
- Mr. Wilkins felt if he was going to change anything in Option 3, he also would like to add that a City Council initiated project would also trigger notification. He would like to add to Option 3 that if City Council was doing a zoning change they would have to send out a notification via certified mail and post the property. He wanted people to know what was going on and felt there would be more scrutiny; the expense was necessary to help inform the public.

- Mr. Hertz felt Option 3 was a good option; however he did not feel comfortable making a change while they were in the middle of a debate on ADUs. After the debate was resolved, he would support Option 3. He did not want to see the city incur the expense of certified mail.
- Mr. Wiener pointed out that if they remove the distinction in Option 3 between council-initiated and private-initiated projects, then every time a comma was changed in the zoning ordinance, they would incur a \$100,000 notification expense. This would mean budgeting a large amount of money for notification and not projects. He preferred Option 3 as written. He felt that the Council should feel comfortable that they were operating in the public trust. The other problem with notification was that the notices were sent to property owners and half of the citizens were renters; therefore, notification was going to someone not being directly affected by the change.
- Mr. Childers asked for clarification regarding the statement that text amendments may only be initiated by City Council. Ms. Gress explained that there was a difference between text amendments and map amendments—text amendments can only be initiated by City Council members; if a citizen wants a text amendment change, they need to petition to the City Council and it had to agree and refer it; whereas a map amendment can be initiated by a citizen when they meet the minimum 35% criteria of people affected.
- Mr. Hertz asked if citizens have ever been allowed to petition for text amendments? Ms. Gress said that process is not changing, if a citizen wishes to petition for a text change, it needs to go through City Council.

Public Comment:

- Jerry Ballas pointed out that there are different kinds of text amendments: those that change little in the zoning code and others that change things considerably. He felt that the City Council spent a lot of time rewriting Title 20 and now we are fine-tuning the text; a map amendment would be something like a PUD. With ADUs, they are trying to change the definition of something that will make a huge impact and affect the livability of the community. He felt there will be a point in time where a text amendment would be so significant that they need to notify the whole City.
- Tom Cook discussed the Lincoln School project. The changes were meant to be minor but were not advertised adequately and many residents felt the changes were made in the dark of night. Most residents don't like the outcome. The City should err on the side of caution for notification.
- Lee Clemmensen felt that they needed to have full notification because this was a zoning change, whether called text or map. This is a massive change of zoning across Missoula, going from R-I to R-II and to manipulate the notification process by amending this is like growing mushrooms—keeping the people in the dark and feeding them manure. She would like to hear from the thousands of people who supposedly want the change in zoning to include ADUs.
- Paul Bohan thought the City Council has forgotten the individuals who live in the City. The people who came in support of the ADU zoning were paid representatives of ASUM. He grew up in a neighborhood that was single-family zoning and a lot of people do not understand how special it is. He felt Missoula should promote the most ideal living situation for as many people as possible.

Chair Jaffe commented that Mr. Ballas was correct in his statement that some changes affected the City more than others and part of the intent of Option 3 was to have a more extensive notification process for some projects. He felt with the ADU topic there should be a very robust process to engage the public. The way the code was written right now a robust notification process was certified mail to every property owner and that was a poor way of doing it. There were a lot of tools at Council's disposal, some a lot more flexible and powerful. There was an assumption that there was a deceitful nature to the Council and a want to destroy the

community; he found that to be entirely false and baseless and was not going to develop policy based on that concept.

Mr. Wiener **moved** to send the item to Planning Board and that Option 3 was the preference. Mr. Wilkins felt that putting the notice in the Independent in small print was not a good way. He did not know what the best answer was, however he preferred certified mailing. He would go along with Option 3 because it did trigger the certified mailing and posting. He did not think that City Council tried to hide things; he thought it was important people were notified and know what was going on and Option 3 would be the best way to do that. Mr. Wilkins **moved to amend** Option 3 to require all zoning changes be noticed by certified mail. The amendment request failed.

Mr. Wiener called for the question on the main motion. The call for the question passed; however, Chair Jaffe allowed discussion for clarification purposes. Ms. Copple wanted a clarification on Option 3. Could Council still require the more robust notification, if it wanted. Chair Jaffe said yes, the entire spectrum was discretionary while the minimum requirement was the state law requirements, anything above that was up to the Council. The motion passed by majority vote and will be discussed on the floor.

2. Urban Fringe Development Area (UFDA) yearbook update. ([memo](#))—Regular Agenda (Casey Wilson) (Referred to committee: 05/21/12) **REMOVE FROM COMMITTEE**

Casey Wilson gave a [brief presentation](#) on Mr. Wiener's request. He felt it could not be more relative to the discussions the Committee had been having. Ms. Wilson will return in July to give a more in-depth presentation to the Joint Interlocal Meeting.

Questions and comments:

- Mr. Wiener asked if it was possible to split the pie between whether a phase had been completed or not. Ms. Wilson felt this could be done and worth doing.
- Mr. Wiener asked if Ms. Wilson could add median densities for multi-family construction.
- Mr. O'Herron wondered if there were fringe areas in a lot of urban communities that were not building out like they had planned. Ms. Wilson did not compare with other communities, so she did not know if this was a trend nationwide or not.

Chair Jaffe and Mr. Wiener thanked Ms. Wilson for her time, work and presentation.

## **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. 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)
4. Direct OPG Staff to draft an amendment revising the accessory dwelling unit (ADU) provisions of Title 20 with the following provisions and to refer the amendment to the Planning Board for review: Revise Chapter 20.45 Missoula Municipal Code entitled, "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 Missoula Municipal Code to reduce required parking to one parking space for a second primary dwelling unit on a parcel that contains no more than two dwelling units, totaling

three required parking spaces for the two units. This would apply to two single detached units or a two-unit house. OPG staff is directed to draft these changes as text amendments to Title 20 and to include a finding of fact and conclusion of law in the staff report indicating the amendments are text amendments. ([memo](#)) ([PAZ](#)) (Returned from Council floor: 4/23/2012)

5. Consider an amendment to Title 20 clarifying that amendment authorizing accessory uses or conditional uses are considered text amendments. ([memo](#))—Regular Agenda (Bob Jaffe) (Referred to committee: 04/23/12)

## **VIII. Adjournment**

The meeting adjourned at 12:07 pm

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.***