

## PLAT, ANNEXATION AND ZONING COMMITTEE MINUTES

City Council Chambers

140 West Pine Street

Missoula, Montana

June 13, 2012, 10:05 AM

### I. Administrative Business

Roll Call

**Members present:** Jason Wiener, Adam Hertz, Alex Taft, Bob Jaffe, Jon Wilkins, Caitlin Copple, Marilyn Marler, Ed Childers

**Members absent:** Dave Strohmaier, Cynthia Wolken, Mike O'Herron, Dick Haines

**Others present:** Adele Allegra, Charlie Atterman, Jerry Ballas, Sally Brown, Toneybeth Clark, Leslie Farrell, Linda Frey, Marsha Frey, Jen Gress, Lyn Hellegaard, Mark McMillin, Renee Mitchell, Jim Nugent, Jeff Padgett, Jim Rolando, Myra Shults, Carolyn Snively, John Snively,

#### Approval of Meeting Minutes

The minutes of May 16, 2012; May 23, 2012; and June 6, 2012 were approved as presented.

### II. Public Comment on Items not Listed

### III. Regular Agenda

A 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. **HELD IN COMMITTEE**

Chair Jaffe introduced this topic with a plan going forward:

- He would like to have the Committee work through identified subject matter (such as the questions about owner occupancy, parking, whether detached or attached dwellings and how to handle grandfathering existing units).
- He then plans to move into holding open house meetings in the neighborhoods affected by this change to gather public input.
- The Committee will then distill the public feedback and hold public meetings with Planning Board and City Council.

Jon Wilkins felt that the neighborhoods have made their needs clear regarding this issue. He made a **motion to table** the discussion of ADUs in single family residential neighborhoods.

**AYES:** Adam Hertz, Jon Wilkins, Caitlin Copple  
**NAYS:** Alex Taft, Bob Jaffe, Ed Childers

The motion failed.

Jen Gress gave a [presentation](#) beginning with the proposed list of discussion topics Chair Jaffe mentioned previously.

She then provided information on the first discussion topic, requiring owner occupancy as a condition of accessory dwelling unit approval.

- Title 20 currently permits ADUs in multi-dwelling zoning districts with a requirement of owner occupancy, and a filed deed restriction.
- Enforcement of owner occupancy is proposed to occur like any other zoning violation, beginning with a complaint.
- Other Montana communities require owner occupation and deed restrictions. Enforcement is done on a complaint basis.
- There is no Montana case law regarding the legality of owner occupancy standards of parcels with an accessory dwelling unit.
- Other communities around the country require owner occupancy and filing of deed restrictions, violations are complaint driven.
- Four court cases were found regarding the subject of owner occupancy. Three courts upheld the legality of the regulation, one did not.

Ms. Gress distributed a [handout](#) with information on what other communities and states do with regard to Owner Occupancy and ADUs. This information is not all encompassing, and is considered a working document for OPG staff.

Questions and comments from the Committee included:

- Jon Wilkins did not like the idea of having a complaint-driven enforcement method. He felt this would encourage problems between neighbors. He cited an example recently brought before the Board of Adjustment in which a neighbor complaint resulted in the matter being brought before the City Attorney's office which necessitated the owners to bring a request for a variance in front of the BOA. The variance was granted for something that should have been illegal in all zoning areas. He asked Ms. Gress for her opinion on this matter. Ms. Gress did not handle this case, she could not comment. Mr. Nugent did not handle this case before the BOA and could not comment on it, either. Mr. Wilkins felt that requiring neighbors to complain about neighbors was not good for the neighborhood.
- Jason Wiener commented that he just left the rental market and it is not fun. He felt the idea of having the owner occupancy restriction in place was important. He also recommended a license of the use with a small fee as well as inspections for safety. Existing units are not being inspected because owners are afraid of losing the unit. .
- Mr. Wilkins did not think the inspection program would be enforceable, since it was illegal to regulate landlords. Mr. Nugent cited the Montana Statute that was explicit about licensing landlords; however it does say that these buildings have to comply with the local building codes.
- Mr. Childers liked the owner occupancy requirement; he felt this would help eliminate a house being rented to 6-8 college students.
- Mr. Hertz wondered if deed restriction would transfer with the property. Ms. Gress felt that this would be picked up at title search. Mr. Zavitz added that the City cannot license people, however they can license structures.
- Mr. Taft found in his research that the state of Washington documents owner occupancy with an annual certification that the owner is still occupying the property.
- Mr. Nugent suggested other ways to approach monitoring the existence of these units, perhaps a permit, but it would have to be a one-time permit.
- Mr. Wilkins would like to have a way to license landlords since this would ensure that rental units were safe to be occupied.

- Mr. Hertz wondered if deed restriction was legal since landlord licensing was not. Mr. Nugent said that there was no way to predict how the court might rule; however, right now there were no problems with deed restrictions.
- Mr. Wiener suggested recertification of property and perhaps a tax on these ADUs. Mr. Nugent does not think this would be enforceable since the County handles real estate taxes.
- Chair Jaffe summarized that it seemed that deed restriction can be done, initial permitting as part of zoning compliance would also be allowed; however, annual recertification would run afoul of the law.

Chair Jaffe asked that public comment be limited to the issue of whether or not to require Owner Occupancy with ADUs.

Public Comment included:

Mark McMillin, Community Forum Chair for Franklin to the Fort Neighborhood, felt that ADUs were alley houses. The ADU debate is a way to circumvent zoning. He cited problems already with parking, traffic, emergency services, not to mention the stress to water, sewer, gas and electric. He felt that ADUs cause additional air pollution, garbage, a decline of property values and turning alleys into roads. He felt there were already too many alley houses and they are less attractive and not more affordable; he felt it was a distraction to issues the City should be dealing with. ([For the complete comments, click this link.](#))

Linda Frey felt that the issue of ADUs was a violation of the agreement between property owners and the City. She was very disturbed about the implementation of complaint-driven enforcement as it pits neighbor against neighbor. She commented the state of Ohio was currently tearing down ADUs because they couldn't keep up with ownership requirements.

Ron Williams moved here to get away from crowded cities and moved to where alley houses are not allowed. Since he moved into his neighborhood, two houses on his street have become rentals, which have increased traffic and parking problems. He felt that taking away the protection of zoning will cause anxiety to residential neighborhoods since every home has the potential of turning into a rental with the noise and crime associated with them. If the Committee plans to make Missoula overcrowded, he would like them to let him know.

Charlie Atterman returned to Missoula because her daughter needed her to help with childcare while in law school. She wished that an ADU would have been possible so that she could live near her; however, she was unable to find affordable safe housing nearby. Ms. Atterman is in support of ADUs and would encourage the Council to look at them with the owner occupancy requirement.

Leslie Farrell read her [statement](#) regarding how difficult it has been to own an ADU rental. She and her husband purchased the small house behind theirs and became reluctant landlords in order to avoid the absentee landlord who was letting the home deteriorate. She was against ADUs and felt that the decision to allow them would cause more congestion in single family neighborhoods and do nothing to provide affordable housing.

John Snively felt that the passing of Title 20 failed to provide a stable framework of zoning. He felt that it has failed to protect residents and property values by not addressing bulk and height. He cited an example of a home being built in his neighborhood that dwarves the homes around it. He felt that this would happen if ADUs are allowed. This would be breaking the covenant the City made with citizens when they pledged to single family neighborhoods that ADUs were off the table.

Jerry Ballas wanted to add his support to everyone who spoke before him (except one

person). His property is the highest investment he's ever made in his life. He felt that changing covenants and zoning would change the value of his investment. He asked the Committee to publish a city map in the paper so that citizens could see the actual impact of what they plan to do. He asked the City to seek the Attorney General's opinion to see if this was legal under state law. He suggested that the legislature work to protect the property values in Missoula. He did not feel this would change rental values, that homes are rented based on what the market will bear.

Marsha Frey felt that this was a way to circumvent zoning and that the Committee is overriding zoning in single family neighborhoods, which will cause a decline of property values and destroy historic neighborhoods. If the Committee wanted cheaper rentals, they should reduce taxes.

Myra Shults, a retired land use attorney thought she lived in a single family residential neighborhood until she checked with OPG and discovered the rentals in her neighborhood were either legal or not recorded. The parking on her street is unbelievable. She has dealt with deed restrictions and they are worthless; title companies do not pick up these deed restrictions. She is against ADUs. She is also against the text amendment versus map amendment she read about in the newspaper and felt that the City would save money by notification via certified mail rather than losing a lawsuit. She cited a lawsuit she defended a community against at one time. Chair Jaffe asked for details, but she was unable to provide them.

Renee Mitchell thought that the Committee intended to circumvent the law to allow rentals. The people who are for ADUs are all owners of one. She would like the Committee to notify all of Missoula by certified mail for this topic and that they should also seek the Attorney General's opinion. She thought there were plenty of places where people could rent out parts of existing houses without building new structures.

Lyn Hellegaard, former City Council member, reminded the Committee that when Title 20 was being rewritten, Kirk Bishop said that the question of owner occupancy is almost unenforceable. She wondered how the City Attorney's office could enforce non-owner-occupied ADUs. She felt that rentals were tight because homeowners have lost their homes to foreclosure. She cited the example of Bozeman and how their citizens fled to Belgrade to avoid infill. She felt that the City would be sued by homeowners associations over this matter.

Thomas Roy observed that affordable housing is not as prevalent in Missoula as desired and felt that the Committee should sit down with the University of Montana and have them accept this responsibility for their increased enrollment. He felt the owner occupancy rule would be hard to enforce.

Other statements presented but not read:

Adele Allegra  
Toneybeth Clark

## V. Adjournment

The meeting adjourned at 11:25 a.m. The topic will be held in committee

Respectfully submitted,

Deni Forestek  
Administrative Secretary