

## PLAT, ANNEXATION AND ZONING COMMITTEE MINUTES

City Council Chambers

140 West Pine Street

Missoula, Montana

June 20, 2012, 10:05 AM

### I. Administrative Business

#### A Roll Call

**Members present:** Cynthia Wolken, Adam Hertz, Alex Taft, Bob Jaffe, Jon Wilkins, Caitlin Copple, Dick Haines, Marilyn Marler, Ed Childers

**Members absent:** Jason Wiener, Mike O'Herron

**Others present:** Jim Nugent, Dave Strohmaier, Carma Gilligan, John Snively, Myra Shults, Archie McMillin, Sally Brown, Jerry Ballas, Albina Reidy, Tom Zavitz, Laval Means, Sherry Wright, Lee Clemmenson, Paul Bohan, Phillip Percyzk

#### B Approve the minutes

The minutes were not approved since they were not attached to the agenda.

### II. Public Comment on Items not Listed

### III. Regular Agenda

#### A Ordinance amending 20.80.030 Nonconforming Structures, 20.80.040 Nonconforming Uses, and 20.110.50 Measurements and Exceptions of Title 20 Missoula Zoning Ordinance --City Council

Due to the number of public comments expected for Item B of the agenda, Chair Jaffe decided to take the agenda topics out of order. Discussion of Item B took up the meeting time; therefore, it was decided to take the Item A topic up at the City Council meeting without the pre-public hearing information.

#### B 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.

Ms. Marler asked to speak to this matter before discussion began. She felt that this issue has been contentious and has generated a lot of feedback. She was not interested in sending this issue to the Planning Board until the Committee had a chance to work out the issue in detail. She does not feel ADUs should be allowed by right in all districts; however, she did not feel it was helpful to receive polarizing comments such as rentals are bad, or students are bad, or renters destroy a neighborhood, or landlords are greedy and pushing for ADUs. She would like to hear constructive feedback.

Ms. Marler felt that the Committee should discuss the following points:

- The need to make a decision about existing illegal ADUs in the Lewis & Clark, Rattlesnake, and/or University areas that are secretive and possibly illegal because of need to address health and safety concerns. She would like to find a way to have these ADUs inspected.
- Explore provisions for allowing ADUs only within the primary dwelling unit.
- The parking issue needs to be raised so that there is adequate parking for ADUs.
- What would the community feel would be an acceptable process for allowing an ADU in single family neighborhoods if by right was not preferred.

Ms. Marler felt that ADUs might be a good option in some neighborhoods; however, she does not think they will solve all the housing problems nor will they cause the end of the world.

Chair Jaffe anticipated the Committee would discuss the issues and work out some options to present at an open house to receive feedback from the community on all the elements before they send it to the Planning Board to be discussed there.

Mr. Strohmaier appreciated Ms. Marler's comments. Although he is not a member of the Committee, he has been wading through a tremendous amount of emails regarding public opinion on this issue. He wondered if the benefits outweigh the costs and where was the middle ground. He does not want to see ADUs allowed by-right in all the zoning districts.

Mr. Wilkins agreed that illegal ADUs exist and since the process of enforcement is complaint-driven, they may go undetected for a long time but this doesn't mean we should make what was illegal, legal. The majority of the feedback he has received have been against continuing the discussion. He does not want to drag the discussion out all summer. He felt that they need to table the issue because it is obvious to him that ADUs are not wanted in single family neighborhoods. He would like to see all rentals be subject to inspection because he felt a safety problem existed in the City.

Mr. Taft appreciated Ms. Marler's comments. He is willing to make changes to his referral. There are some people happy with his referral, and some are not. He wants to see the rights of property owners balanced with the rights of the community.

Mr. Childers recalled that when the City Council was talking about occupancy standards years ago because of college students renting houses, homeowners seemed to think that owner occupancy would be helpful because if owners are required to live in the home, they would be more likely to care for the property and care what neighbors think. At that time, Mr. Nugent cautioned that this could not be legally upheld; however if there was an ADU on the property, they could require owner-occupancy. He liked the idea of ADUs because some older people might find it helpful to have somebody on the property to help. He does not feel that allowing them in multifamily zones made much sense. In his experience, when the government tells people what to do with their property, things can get heated; zoning tells people what they can do with their property. He doesn't see the point to allow detached ADUs since it would require a subdivision for lease or rent. He would like to discuss maximum floor space of possibly 600 sq ft maximum, parking requirements and how to allow them to be built in single family neighborhoods.

Tom Zavitz continued the staff report [presentation](#) from the last meeting: What they would like the Committee to discuss this time is potential standards for ADUs, such whether ADUs should be allowed within the primary dwelling unit, detached or both and what the design standards should be, highlights were:

- ADUs could be created within the primary dwelling unit, such as in a basement, attic or separate wing of the home.
- An ADU could be a separate building that has been modified into a dwelling unit, such as a shed or garage
- An ADU could be built as a new separate dwelling unit
- An ADU could be an addition to an existing primary dwelling unit adding to the footprint or floor area.

Questions and comments from committee:

- Mr. Haines wondered if parking spaces should be in the criteria. Mr. Zavitz clarified that parking was considered one of the primary considerations.
- Mr. Wilkins wondered if detached units should be accessed from the alley and what would that cause to happen to the alley. Mr. Zavitz stated that these were Public Works and Building Department standards and they would need to be considered.
- Mr. Taft asked Mr. Zavitz to clarify the requirement that the entrance needed to face the street—can you create an ADU within a structure with a side entrance that faces the street? Mr. Zavitz clarified that the current regulations limit adding another entrance to the façade of a building for the entrance for an ADU but it might be ok for the entrance to face the street if it was located along the side of the building - these standards can be modified if the council chooses .
- Mr. Wilkins did not like this idea since there are homes in existence that do not have front-facing entrances; the requirement does not cover all situations.

Ms. Marler would like to discuss whether people would be in favor of making ADUs a conditional use. Chair Jaffe asked Mr. Zavitz to outline the process regarding a conditional use. Mr. Zavitz explained that in the conditional use process, there would be an application, a staff report would then be created, a notice of public hearing would be printed in the newspaper, mailed notice made to neighbors, neighborhood council, and the area would be posted, and the City Council would hold a public hearing on whether to approve or deny. Mr. Hertz asked if the neighbors could protest; Mr. Zavitz said they could give public comment, either by writing, email, phone call, or at the public hearing but that zoning protest is not triggered.

Chair Jaffe asked for public comment:

Sherry Wright has lived in the South Hills for 15 years. Last year they invited some close friends to move into their downstairs; however, when they went to refinance, they checked with OPG and found out they could not get a variance because they were not zoned for an ADU. The couple had to move out. She supposed that she would rather live in a neighborhood with two middle-aged couples living next door rather than four college students in a house.

Albina Reidy was opposed to allowing ADUs. Her neighbor rented out their basement and the parking in the cul-de-sac became unmanageable.

Carma Gilligan wished to echo the previous public comment. She does not like detached ADU units because of the parking problems in the alleys. She would like restrictions on rentals, such as maintenance, upkeep, and parking standards.

Mark McMillin prepared a [statement](#); however, after listening to some of the Committee members, he is going to rethink some of his statements. He suggested that before discussing this, the Committee should build a pro and con list. He thanked the members for looking at how complicated this issue can be and not backtracking. He would like to concentrate on traffic and parking concerns with alley houses. He worried that the City was taking on too many issues at one time to be thorough and effective in dealing with them. He encouraged the Committee to table this issue.

Archie McMillin felt ADUs needed to be discussed for a long time. He is a homeowner and landlord and the last thing he wants is another house next door to his garden blocking the sun. He felt that the Committee does a decent job of deliberating. He is in favor of increasing density and adding ADUs is one possible option. When young families cannot buy homes, they move to outlying areas and cause urban area schools to be closed. As a landlord, he thinks the idea of owner occupancy is a good idea.

Sally Brown lives in the University district and is in favor of ADUs. Her interest in having an ADU is to stay in her home and neighborhood; she would like to create a little unit to live in and rent out the large home to a caregiver. She pointed out in her neighborhood there are multi dwelling units. She would like the Committee to continue to keep their minds open and get to a solution the city can live with.

Myra Shults is adamantly opposed to ADUs; however, she would be more in favor of attached rather than detached forms of ADUs. She felt owner occupancy was essential to keep control of the situation and is concerned about increased parking demand issues. She explained that there is a subcommittee working on SLR and they never imagined that it would apply to ADUs in a city.

Lee Clemmenson felt that this issue was an overwhelming change in zoning and the Committee should solicit opinions from residents with a postcard to be returned and whether residents want ADUs, and whether they should be attached or detached. ADUs will increase on-street parking and other impacts, some of which would be issues with sewer and water. She felt there would be other impacts to the neighbors in terms of devaluations, obstruction of alleyways, paving, dust, and problems for emergency access. There will be crime issues if the density increases and an increase in heat by covering up the valley floor with homes. These impacts should be discussed before design standard issues.

Paul Bohan felt that Title 19 illustrated that zoning was not worth anything if it can be changed. The rights of property owners are being changed. Density was the biggest issue and he did not mean just - people- structures, cars, parking, and traffic were issues, too. The quality of life and sense of community is best in single family neighborhoods with ownership. This would take away diversity of neighborhood structures and you can't get the single family neighborhoods back. When zoning changes, there is no more choice, not more single family zoning, and no variety in structure. He felt there was a way to police properties by taxing the primary residence differently. The city keeps attracting people to move here but they do not have jobs for them to support themselves. ADUs will not solve any problems. Giving away city land for low income housing that could be used for other things is not acceptable. He felt that zoning should be less changeable. He felt that some of the City Council members were landlords and owners of ADUs and they should disclose this.

Jerry Ballas would like to publicize the map on display to show the impact to the city. When he bought into the University area, he bought because it was single family zoning. He would like to maintain these areas for future generations and young families that would be close to existing neighborhood schools. He finds it hard to address design standards because he would rather not allow ADUs in single family zones.

Jon Wilkins **moved** to recommend to City Council that they notify the City residents with a

postcard to outline the discussion on ADUs and list public hearing dates.

John Snively supported previous comments about concerns regarding ADU allowance in single family zones.

AYES: Jon Wilkins, Dick Haines

NAYS: Cynthia Wolken, Alex Taft, Bob Jaffe, Marilyn Marler, Ed Childers

ABSTAIN: Adam Hertz

The motion failed.

Discussion on the motion:

- Ms. Marler would like to hold an open house after work hours to listen to feedback from the public; she did not feel the committee was ready for notification until they have worked out a few issues.
- Mr. Hertz felt that the city already publicizes public meetings, he did not feel the need to add any additional notification.
- Mr. Childers felt it would be an interesting use of \$10,000 but not a productive one.
- Chair Jaffe did not feel the process was defined enough to have an open house. This was a preliminary phase where the Committee is deciding what they are going to talk about; he anticipates greater outreach to the public once the issues are further defined.
- Mr. Wilkins felt that with all the political talk about transparency that the notification would be appreciated by the public. He called for the question.

The vote on the call for the question failed; debate continued.

- Mr. Hertz could not support the motion; he understood it was the people's civic duty to be engaged and if they do not want to be engaged, a notification would not change their involvement. He did not see it as a good use of taxpayer money.
- Ms. Wolken would like to continue the discussion on the issue and invite the public after they have ironed out the issues. She was in favor of sending out an informative postcard in the future.

Public Comment on the motion:

- Myra Shults supported Mr. Wilkins motion—she felt you cannot receive input if you do not inform people. She does not agree with Mr. Hertz; people do not know they should be engaged and notice would be due process. She urged them to publicize this zoning change.
- Philip Percyzyk did not know about the meeting until a friend told him. He had concerns about ADUs and thanked Mr. Wilkins for his desire to involve the public.
- Mark McMillin felt that although it does cost money to be informed, it would be worth it to see what kind of response might come of it. He officially supported Mr. Wilkins.
- Albina Reidy supported Mr. Wilkins' motion. She felt it was important that homeowners know what's going on, they have a right to know.

Mr. Wilkins stated that the cost of the notification would not be too much, it would only be a postcard mailing.

#### **IV. Ongoing and Held Committee Business**

- A      Ordinance amending Title 20 clarifying that amendments authorizing accessory uses or conditional uses are considered text amendments.
- B      Annexation, (see separate list at City Clerk's Office for pending annexations) (Ongoing in committee) --

- C Discussion of City planning issues with members of the Planning Board. --Bob Jaffe
- D South Russell Fee Waiver --Bob Jaffe
- E Consider an amendment to Title 20 clarifying that amendment authorizing accessory uses or Conditional uses are considered text amendments. --Bob Jaffe
- F Amend 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.

**V. Adjournment**

Respectfully submitted,

Deni Forestek  
Administrative Secretary