

Plat, Annexation and Zoning Committee Minutes

June 24, 2009

9:25 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

Members Present: Bob Jaffe (Chair), Ed Childers, Lyn Hellegaard, John Hendrickson Dick Haines, Marilyn Marler, Renee Mitchell, Stacy Rye, Dave Strohmaier, Pam Walzer, Jason Wiener, and Jon Wilkins.

Members Absent:

Others Present: Kirk Bishop, Dana Boruch, Phil Condon, Jen Gress, Elaine Hawk, Jamie Hoffmann, Ruth Link, Laval Means, Roger Millar, Ryan Morton, Jim Nugent, Olivia Riutta, Lewis YellowRobe, Tom Zavitz, Bobbi Day, and Shelley Oly

I. Approval of Minutes

June 17, 2009 were approved as presented.

II. Public Comment on Items not on the Agenda

III. Staff Announcements

IV. Consent Agenda Items

V. Regular Agenda Items

A. An [ordinance](#) repealing Title 19 Zoning Code in its entirety and adopting Title 20 Missoula City Zoning Ordinance and an [ordinance](#) repealing Title 2.84, the Historic Preservation Committee in its entirety. ([memo](#)) ([PAZ](#)) ([Staff Report](#)) —Regular Agenda (Laval Means) (Returned from Council floor: 06/22/09) (**HELD IN COMMITTEE**)

Chair Jaffe reminded Committee where they left off from the June 23, 2009 meeting with questions for the consultant and suggested continuation of those questions. He sent out a list of things to cover starting with ADUs and then small lot developments. The following questions were raised:

- What would happen to the existing illegal versions of ADUs? Mr. Bishop replied the existing ADUs would continue to be illegal unless the ADU complied with all the development standards then it would become a legal nonconforming unit. The existing language could be modified to address current ADUs.
- The issue of the sign ordinance in relation to public art, advertisement versus a public art piece. A referral regarding public art was being submitted to Council asking to reduce the cost or set a new fee for public art. Mr. Bishop added that those types of signs would be subject to some sort of sign regulation. The question was how to define art rather than some commercial message.
- Mr. Bishop was asked to share some of his experiences working in other communities to deal with ADUs. He cited a city in Kansas of similar size; this community elected to accommodate ADUs. He researched ADUs and found that California mandated that cities accommodate this type of housing through state laws. He also found that there had not been a rush to establish ADUs on those lots in California.
- Was an ADU over a free standing garage possible with the proposed standards allowed? Mr. Bishop answered there was a slight possibility under the proposed ordinance standards but there would be constraints such as the pitch of the roof, the overall height of the building, living space and the vehicle space to be addressed. It was not intended to be outlawed, although sensitive to keeping heights down in rear yards.
- Why was there a deletion in the definition that stated there could not be a common building entrance in multi dwelling buildings rather than a multi dwelling house? Mr.

Bishop replied that a common entrance would give the building the appearance of a large house. This was a Planning Board recommended revision but he did not know what the rational behind it.

- Clarify the cluster conservation development and buffering. Mr. Bishop stated there were two options for buffering; to help transition from the large lot to the cluster development or to establish an actual visual buffer of open space.
- How could owner occupation be controlled when the owner was gone or sold? Mr. Millar explained that a deed restriction could state that any future property owner had to occupy the property. A condition could be put on the deed restriction so that it could only be removed by Council action.

Jamie Hoffman felt that the height definition needed to be rewritten to take into account pitched roofs. If someone wanted to build an ADU over a garage they would have to put in a square building. Mr. Bishop pointed out that there is a regulation that the ADUs have a matching roof line to the main house. Mr. Millar pointed out that staff wrestled with the issue of pitched roofs. There are three exceptions in the current ordinance but the direction of the proposed ordinance was to keep measurements simple and eliminate the exceptions.

- In the Santa Cruz study concerning the ADU overlays was there the possibility of the State looking at properties that had the possibility of an ADU and getting taxed accordingly? Mr. Bishop was not aware of this situation.
- There were three court cases that stated that a change in use was a change in zoning. If the chart showed a change in use in every zone, how was this not a rezoning? Mr. Millar clarified that of the three court cases nationwide only one of them was determined there was a change in zoning. An area permitted mobile homes at the time of the rewrite but prohibited that use later. The court treated this instance as a rezone. Planning Board reviewed and addressed all uses in Residential, Commercial and Industrial zones. They determined that some were not substantive and other new uses were made conditional so there was a public process before it could be applied.
- UFDA says there will be a certain number of new units to occur in certain areas. How is that not an increase in density? UFDA looks at a portion of the number of units that can already occur given current zoning, many of those new units are in Commercial districts.
- How does this relate to the Scraping Ordinance? The regulations for scraping are not changed and would not infringe on a property owner's right to make changes to his property. Scraping is illegal only in situations relating to non-conforming lots(section 20.80.020.B4)
- What is the difference between residential multi family R1 and R.5 and R1.5. Mr. Bishop replied the difference is the required density. The R1 is 1000 square feet of parcel area per dwelling unit, .5 is 500 hundred square feet of dwelling unit and R1.5 is 1500 square feet of dwelling unit.
- Does the nexus criterion apply only to dedications of land and not conditions of land? Mr. Nugent replied the provision was found on page 20.85-4 which stated when decision making bodies approve the application conditions, the conditions must relate to the situation created or aggravated by the user and must be proportionate to the maximum use.
- How standard is the maximum lot coverage to have institutional buildings be integrated with urban style neighborhoods. Mr. Bishop replied the lot coverage provision limited OP-3 districts to 45 % of parcel area. OP-3 was equivalent to the P-2 district. He added that 45% is a typical building coverage for schools.
- How would the garage access provision impact residential development in the M1-R district? Kirk Bishop replied it would impact it by sending it to the CiBOA. He added

that using the word 'or' instead of 'and' and tying it to the residential district. May be possible. He felt that the 20-foot was an appropriate standard for residential.

- Where would the pedestrian overlay be applicable too? Mr. Bishop stated it could be a tool for the downtown area, Higgins Street or Brooks Street or it could apply to other small segments of street that are at least two blocks in length.
- Could it be established with the CBD zone? Mr. Bishop remarked the intended use was to prevent the type of development that disrupted the pedestrian overlay. Mr. Millar added this was a tool that was available and could be applied and that the Downtown Master Plan is also exploring implementing options and coordinating with this plan.
- How much of the parcel lot could be covered with ADU structures and sheds, garages and how much is restricted to landscaping. Mr. Bishop replied that would depend on the zoning category and what the principle building was like. There is not a limit on the amount of total lot coverage in most zoning districts. If this ordinance was adopted there would be restrictions on the amount of rear yard that could be covered with accessory structures in the accessory use chapter. Total combined building coverage for accessory structures may not exceed 50% of the rear yard. This is found in Section 20.45-2(d).
- Do porches in ADUs count in the setbacks? Mr. Bishop replied the porch setbacks for a detached ADU was the building separation between the primary dwelling and the accessory dwelling of at least 10-feet.

Discussion of ADUs

1. Stacy Rye made a **motion** to allow ADUs as-of-right in multi family zones using the standards in Chapter 20.25.080 proposed for ADUs and require that one dwelling has to be owner occupied, deed restricted and only the City can change or remove the restriction.

To clarify, ADUs would still be possible through an overlay in other zones. ADUs in multi family districts made sense because those zones are already set up for density and provides another option. Ms. Rye also clarified the proposed districts she is referring to include RT5.4, RT2.7, RM2.7, RM1, RM1.5-35, RM1.5-45, RM0.5 and RMH. These are the existing R-VIII, R-II, R-XII, MU, R-III, R-IV, B, RH and R-VI, respectively (there is no equivalent to RM-1)

2. Jon Wilkins made a **substitute motion** to remove ADUs as an overlay option in any (R) single family zones. To clarify the proposed districts that would prohibit the ADU overlay are R215, R80, R40, R20, RT10, R8, R5.4, R3. These are the existing SRR, LSR, RDL-1, RLD-4, RR-1 and R1, respectively (there is no equivalent to R3)

3. There was discussion on the substitute motion:

- ✓ Did not want to exclude ADUs city-wide.
- ✓ Wanted to leave existing ADUs as allowable with overlay zones in R districts to help increase home ownership and safety for tenants.
- ✓ There was a need to have the additional legal ADUs with off street parking.
- ✓ Concerned about all residential ADUs.
- ✓ Not all R-1 and A Districts are the same. University neighborhoods already have a lot of ADUs.
- ✓ Most of the concern over ADUs seems to be from the single-family districts.

Mr. Millar clarified that an ADU could only be placed on a parcel with a single family structure not a multi dwelling structure.

4. Pam Walzer made an amendment to not exclude ADUs for only the R5.4, R8 and RT10 districts.

5. Mr. Wiener and Ms. Rye both agreed that neither of the motions acknowledge the existing ADUs and that Mr. Wilkins motion is too restrictive. Mr. Millar reminded the

committee members that the neighborhood character overlay allowed for supplemental uses and a neighborhood could ask for a neighborhood overlay that could include ADUs

6. Ed Childers felt that excluding the smaller R zones was skirting the main problem. He called for the question on Ms. Walzer's amendment, it carried.

The amendment to exclude ADUs for single family zones with minimum lot size of 10,000 square feet or less failed with one vote of 'aye' and 11 votes opposed (Mr. Childers, Mr. Haines, Ms. Hellegaard, Mr. Hendrickson, Mr. Jaffe, Ms. Marler, Ms. Mitchell, Ms. Rye, Mr. Strohameir, Mr. Wiener, and Mr. Wilkins)

7. There was discussion on the motion to remove the ADU overlays from single family zones:

- ❖ Would existing ADUs be grandfathered in the motion?
- ❖ Felt ADUs warranted a discussion on its own.

8. Mr. Wiener made a motion to table Jon Wilkin's substitute motion.

Mr. Millar stated there are two kinds of existing ADUs, legal non-conforming which were in place before the zoning code and illegal ADUs. Non-conforming ADUs would continue to exist and be legal and illegal ADUs would continue to be illegal.

The **motion to table** the removal of ADU overlays from single family multi family zones and discuss at a later date failed with 3 votes of 'aye' and 9 votes opposed (Mr. Haines, Ms. Hellegaard, Mr. Hendrickson, Mr. Jaffe, Ms. Marler, Ms. Mitchell, Mr. Strohmaier, Ms. Walzer, and Mr. Wilkins).

The **motion** to remove the ADU overlays from single family zones passed with 8 votes of 'aye' and 4 votes opposed (Mr. Jaffe, Ms. Rye, Mr. Wiener, and Mr. Childers).

Renee Mitchell made a **substitute motion** to put a placeholder in the draft ordinance for ADUs, table the motion and revisit ADUs at a later date. Mr. Wilkins called for the question, it carried. The substitute motion to table the ADU discussion for a later date and put a placeholder in the draft ordinance failed with 1 vote of 'aye' and 11 votes opposed (Mr. Childers, Mr. Haines, Ms. Hellegaard, Mr. Hendrickson, Mr. Jaffe, Ms. Marler, Ms. Rye, Mr. Strohmaier, Ms. Walzer, Mr. Wiener, and Mr. Wilkins).

Mr. Strohmaier stated that given the nature of multi family districts having ADUs by right was a compatible use. He called for the question, it carried.

The **motion** to allow ADUs as-of-right in multi dwelling and two dwelling zones using the standards in Chapter 20.25.080 proposed for ADUs and require that one dwelling has to be owner occupied, deed restricted and only the City can change or remove the restriction passed with 8 votes of 'aye', 3 votes opposed (Ms. Hellegaard, Mr. Haines and Ms. Mitchell) and 1 abstained (Mr. Hendrickson)..

The discussion was opened for public comment on the amendment and Mr. Wilkins's motion:

Phillip Perszyk asked about the boundaries of the University district because he was not aware of that many ADUs in that immediate area.

Philip Condon stated he was very confused by the discussion of the existing ADUs because no one was going to force anyone to move out of existing ADUs. He did feel this was one of the most contentious and misunderstood issues and suggested a placeholder should be put in place and this issue revisited and discussed on its own merit. He pointed out that during the Planning Board discussion Mr. Bishop suggested a minimum land area could be required for an ADU overlay. Planning Board debated that concept and voted it down. He suggested a survey to determine the amount of existing ADUs. Mr. Condon presented further public comment on other issues.

Ryan Morton commented that ADU overlays were expendable and more density was needed then up the zoning. He supported the as-of right in multi family area.

Jim Parker would like to see ADUs as of right in all districts. He pointed out that ADUs were a critical section of the draft even though not everyone agrees with them. But most people understand them. He stated that there is an aging population facing difficulty in affording the costs as one ages. ADUs would help people stay in their homes longer. The right to have ADUs boiled down to two issues, compassionate care/ family values and affordability.

Discussion of Small Lot Section:

Mr. Childers summarized small lots as instead of having large lot area requirements for single family dwellings there would be a smaller area for single family dwellings and if all the properties were built in smaller areas the density would be less than allowed by zoning. Mr. Bishop replied he was not sure the density would actually decrease. Given that the motion carried for ADUs the small lot section would be applicable to ADUs. Chair Jaffe stated as long as it met the set back and lot coverage.

Chair Jaffe asked when a parcel was split and an additional unit was created with either same ownership or separate ownership did this increase or decrease the value of the property? Was there any data that backed either position? Mr. Bishop replied he never encountered any research that stated affordability would decrease. He suggested researching property assessment criteria to see how property was assessed.

Ed Childers asked whether the definition of a dwelling unit included a kitchen. Mr. Millar read the definition from page 20.100-6 that stated any building or portion of a building providing a complete kitchen and bathroom and independent and permanent living or housekeeping facilities.

Chair Jaffe identified small lot issues, height and hillside and bed and breakfast as issues to cover at the next PAZ meeting July 1, 2009.

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. Update the Rattlesnake Valley Comprehensive Plan Amendment ([memo](#)).—Regular Agenda (Dave Strohmaier) (Referred to committee: 04/02/07)
3. Discuss council's interest in pursuing a negotiated settlement over disputed trail conditions for Clark Fork Terrace No. 2 Subdivision ([memo](#)).—Regular Agenda (Mayor Engen/Jim Nugent) (Referred to committee: 02/25/08)
4. 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)
5. Correct the conflict in the height calculation regulations, between written language (a building envelope shall be established by showing the maximum vertical height allowed by zoning from finished grade) and the drawing on [page 151](#) of the [Zoning Ordinance](#).—Regular Agenda (Ed Childers) (Referred to committee: 3/27/06)
6. Ongoing discussion of City planning issues with members of the Planning Board.—Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
7. Discussion on assuring the currency of growth policy amendments ([memo](#))—Regular Agenda (Dave Strohmaier) (Referred to committee: 09/08/08)
8. Consider an interim emergency ordinance for proposed amendments to the City Zoning Ordinance, Chapter 19.90 Signs ([memo](#)).—Regular Agenda (Tom Zavitz) (Referred to committee: 12/15/08)
9. Consolidated Public Review Draft of the Missoula City Zoning Ordinance submitted by Duncan Associates to the Missoula Consolidate Planning Board for its review and recommendation ([memo](#)).—Regular Agenda (Roger Millar) (Referred to committee: 02/09/09)

10. Discussion of OPG's [task list](#) and workload ([Urban Initiatives work plan](#)).—Regular Agenda (Mike Barton) (Referred to committee: 06/12/06)
11. Develop policies and procedures regarding ag land mitigation ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 06/01/09)
12. [Petition 9428](#)—Peters Properties LLC; 208 Montana Avenue and 210-212 Montana Avenue; Part of Lot 17, All of Lots 18-20 of Block 32 of East Missoula Addition; Geocode #220024117020000; Petition for Annexation

VIII. Adjournment

The meeting adjourned at 11:55 a.m.

Respectfully Submitted,

Shelley Oly
Administrative 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.