

## Plat, Annexation and Zoning Committee Minutes

September 7, 2011

10:05 a.m. to 11:00 a.m.

City Council Chambers, 140 W. Pine Street

**Members Present:** Bob Jaffe, Ed Childers, Dick Haines, Lyn Hellegaard, Marilyn Marler, Stacy Rye, Dave Strohmaier, Pam Walzer, Jason Wiener

**Members Absent:** Renee Mitchell, Jon Wilkins, Cynthia Wolken

**Others Present:** Jeff Stevens, Jen Gress, Bob Martin, Jenn Clary, Laval Means, Jim Betty, Jim Nugent, Linda Frey, Jeremy Betty

**I. Approval of Minutes for August 17, 2011 - Approved as presented**

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

None

**III. Staff Announcements**

None

**IV. Consent Agenda Items**

1. Set a public hearing to adopt an [ordinance](#) amending the Missoula City Zoning Ordinance, Title 20 as recommended by the Missoula Consolidated Planning Board and shown in Title 20 maintenance amendments – 2011. ([memo](#))—Regular Agenda (Jen Gress) (Referred to committee: 08/22/11) **REMOVE FROM AGENDA**

**MOTION:** The Committee recommends that the City Council set a public hearing for October 3, 2011 to adopt an Ordinance amending Title 20, City Zoning Ordinance, as recommended by the Missoula Consolidated Planning Board, and shown in Title 20 maintenance amendments – 2011, Attachment A.

Jen Gress presented the staff report, highlights of which included:

- ✓ These were considered housekeeping items.
- ✓ The list and packet were previously sent electronically to Committee members.
- ✓ The pre-public hearing update will be September 28, 2011 and will include more information.

Jason Wiener made the motion to set the public hearing for October 3, 2011. The motion passed unanimously,

**V. Regular Agenda Items**

2. An [ordinance](#) to rezone property at 1500 39<sup>th</sup> Street from RM1-35 (Residential, 43 multi-dwellings per acre) & RT2.7 (Residential, 16 dwellings per acre) to B1-1 (Neighborhood Business) and RM1.5 (Residential, 20 multi-dwellings per acre [PAZ minutes 7/20/2011](#) (Returned from Council floor: 08/15/2011) **REMOVE FROM AGENDA**

**MOTION:** The Committee recommends that City Council adopt an ordinance to rezone property located at 1500 39<sup>th</sup> Street from RM1-35 (Residential, 43 multi-dwellings per acre) to B1-1 (Neighborhood Business).

Janet Rhoades presented an update on this project.

- ✓ The legal protest was valid so a super majority will be needed at City Council to approve this rezone ordinance.

- ✓ The Committee sent a recommendation for denial to City Council; however, Council did not act on it and it was returned back to Committee.
- ✓ A motion to approve or deny was necessary today.
- ✓ The original request had three parts; however, two of these requests have been withdrawn so only one request remained to rezone.
- ✓ The request to rezone was for property located at the corner of 39<sup>th</sup> and Russell, to rezone from RM1-35 to B1-1.

Questions and comments:

1. Stacy Rye wondered if the approval to rezone could be conditioned by the Committee. No, rezones could not be conditioned.
2. Ed Childers requested a quick summary/overview about the differences between the present zoning and the proposed rezoning. Ms. Rhoades explained that the density would remain essentially the same. The maximum height at the present zoning is 35 feet whereas the height maximum for B1-1 zoning is 40 feet. B1-1 zoning is Neighborhood Business, which allows lower intensity commercial uses such as restaurants, dry cleaners, office, etcetera, and vertical mixed uses which allows a commercial first floor and residential above.
3. Pam Walzer requested a presentation from the developer's representative. Jennifer Clary, representing Jim Betty, the developer, distributed a [packet of information](#) and gave a brief presentation:
  - ✓ There would not be enough room on just one parcel to build a fast food restaurant or a drive-through and still meet landscaping, parking, and other zoning requirements.
  - ✓ Worst case scenario at the present zoning would be to put in 18 dwelling units and 18 parking spaces.
  - ✓ Worst case scenario at the proposed zoning would be all residential, which could be 17 dwelling units.
  - ✓ If the rezone request was approved, the owner would be able to put in a vertical mixed use, three-story building with commercial below and eight dwelling units above.
  - ✓ The applicant would like to put a food/beverage use, such as a coffee shop or ice cream parlor; an office; and a personal use (yoga studio) business on the first floor and dwelling units above.
  - ✓ Any traffic concerns would be met with a right-in, right-out only traffic pattern for the parcel.
4. Bob Jaffe speculated that if the owner of the rezoned parcel also owned the parcel next door, the owner would be able to use the other parcel to grant an access easement for traffic. Ms. Clary compared the parcel to the property at Orange and Broadway, where access was right-in from Broadway and right-out from Orange and functioned very well. Ms. Rhoades cited restrictions in the zoning code that residential parcels cannot be used solely for parking; however, the City Engineer would have to be consulted about accessing Mission Court. Ms. Walzer quoted zoning code that non-accessory parking was not permitted on this parcel at its present zoning.
5. Lyn Hellegaard was concerned that Mr. Betty owned all the parcels and there was no guarantee that the proposed building would be erected on that site. She pointed out that there was a legal protest and that the Committee should honor what the neighbors wished. She felt this was a radical change and it did not fit into the neighborhood.

Lyn Hellegaard made a motion to deny the rezone.

Public Comment included:

Jeremy Betty owned a duplex on Mission Court and used to live there. He was excited about the project and thought it would be wonderful for the neighborhood to have somewhere to walk. He pointed out that two of the legal protests were from the gas station, not the residents.

Lindy Frey, 100 Hillview Way, explained that the project was disturbing to the neighbors and it bothered her that the worst possible scenario would be a fast food restaurant. She referenced a bank that became a fast food restaurant that caused a great concern to the neighbors of the

bank. She urged the Committee to give it more thought and pointed out that she was one voice of many people.

Jeff Stevens of the South 39<sup>th</sup> Street Council, saw potential for people to use the access improperly, go the wrong way, and cause a safety concern. He felt that 39<sup>th</sup> Street was a residential street and he asked the Committee to reject this proposal.

Jim Betty reiterated that he bought the corner parcel because he felt it was blighted and he wanted to create a buffer between residential areas and the gas station and fire station on the other corners. He would like to make this an attraction. He pointed out that a fast food restaurant was not practical.

Jason Wiener asked Ms. Frey for more information regarding the conversion she made reference to—such as details and location. Ms. Frey thought perhaps this parcel was on Brooks, although she was not sure. Ms. Frey explained that there was a lot of traffic on 39<sup>th</sup> Street and it was a bottleneck during rush hour traffic.

Questions and comments on the motion to deny the request:

1. Dave Strohmaier could not support the motion. He asked for clarification regarding a statement he had heard elsewhere regarding City Council promising no more commercial zoning on 39<sup>th</sup> Street at the time it was improved. Ms. Rhoades had not heard of this.
2. Marilyn Marler not support the motion because she did not feel it was a drastic change. She felt the handout from Ms. Clary was helpful, made sense, and was a good use of the parcel.
3. Jason Wiener was not persuaded that this project would be a devastating blow to the neighborhood. He felt that Mr. Betty's arguments were good ones and that he did not feel it was healthy to stick to the status quo and deny everything.
4. Ed Childers felt that his concerns were addressed and that this project was not unreasonable. He pointed out to Mr. Betty that one should not buy property on the expectation it could be rezoned.

Ed Childers amended the motion to change it from denial to approval and suggested the Committee vote on this first. Mr. Haines brought up a point of order that this was not an amendment to the motion; it was a substitute motion and that it was not appropriate. Chair Jaffe agreed it was confusing, but felt it was better to make affirmative motions because the outcome was the same. Ms. Hellegaard withdrew her motion.

Ed Childers made a motion to approve the rezone. Comments on the motion to approve included:

1. Lynn Hellegaard pointed out that this was a valid legal protest against the rezone; the neighbors have asked that a PUD be placed on the corner so they know what was going to be built. She felt they were comparing the best case scenario to rezone versus the worst case scenario with the present zoning. The neighborhood has been there for 40-plus years and was well-established.
2. Stacy Rye supported the motion because it was an urban location and seemed that residents were wrapped around the notion of commercial only being in one location. Locations change, and at one time all of Missoula was a prairie. She supported light commercial and mixed-use neighborhoods because it made sense, saved energy and was good for the neighborhood in the end.
3. Dave Strohmaier supported the motion with the caveat that if folks were able to dredge up documentation that lent credence to the previous Council promising no commercial development along 39<sup>th</sup> Street, he would be willing to revisit his decision. He pointed out that listening to the neighbors was not a matter of coming to the same conclusion.
4. Chair Jaffe supported the motion because he believed that this was appropriate zoning for that corridor and the rezone created a step-down from one zone to another. He felt that the traffic questions were mitigated.

The motion to approve the rezoning request passed with two nays (Hellegaard, Haines.)

#### **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. 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)
3. Ongoing discussion of City planning issues with members of the Planning Board.— Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
4. Resolution repealing resolution No. 7404 and declaring the annexation of Lots 53 and 54 Dinsmore's Orchard Homes No. 5 null and void. ([memo](#))—Regular Agenda (Jessica Miller) (Referred to committee: 01/10/2011)

#### **VIII. Adjournment**

The meeting adjourned at 10:57 a.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.***