

Plat, Annexation and Zoning Committee Minutes

October 19, 2011

10:05 a.m. to 12:00 noon

City Council Chambers, 140 W. Pine Street

Members Present: Bob Jaffe, Ed Childers, Dick Haines, Marilyn Marler, Renee Mitchell, Stacy Rye, Pam Walzer, Jason Wiener, Jon Wilkins, Cynthia Wolken

Members Absent: Lyn Hellegaard, Dave Strohmaier

Others Present: Jen Gress, Laval Means, Jim Nugent, Amy Fisher, Nick Kaufman, Jim Decker, Tim Worley, Tom Zavitz, Deni Forestek

I. Approval of Minutes from October 12, 2011

The minutes were approved as presented.

II. Public Comment on Items not on the Agenda

III. Staff Announcements

IV. Consent Agenda Items

V. Regular Agenda Items

1. Discuss the conditional use request for 2406 River Road (Bee Hive Homes) Assisted Living expansion. ([Memo](#))—Regular Agenda (Tim Worley) (Referred to committee: 10/17/11) **REMOVE FROM AGENDA**

Tim Worley [presented](#) the proposal to expand one of the existing living facilities at Bee Hive Homes, represented by Jim Decker. They wish to expand the building at the northern side of the campus to add five beds. OPG Staff recommends approval.

Public comment:

- Nick Kaufman worked on the original site plan and felt that this organization has been exemplary in their dealings.
- Jim Decker explained that this addition was designed to include a covered patio, since the residents enjoy an area where they are protected from the elements.

Questions and comments of Committee members:

- Jon Wilkins expressed his opinion that Bee Hive Homes is the best in Missoula. He will support this request.
- Dick Haines felt this was an advantage and felt he could support it as well.

The public hearing for this item will be on Monday, October 24, 2011.

2. Approve or deny the Stonybrook plat extension request. ([Memo](#))—Regular Agenda (Tim Worley) (Referred to committee: 10/17/11) **REMOVE FROM AGENDA**

MOTION: The Committee recommends that City Council approve the request to extend the preliminary plat approval period with a final plat submittal deadline of November 10, 2015 be conditionally approved to permit a final plat submittal date of November 10, 2013.

MOTION: The Committee recommends that City Council authorize the mayor to sign on behalf of the members of the governing body the mutually agreed upon extension.

Tim Worley gave a [presentation](#) regarding this request to approve a plat extension of the Stonybrook Subdivision, a 43 lot, 17.5 acre subdivision located on the corner of Tower & Third Streets. It was approved 11/10/08 and given an extension until 11/10/11. The applicants and WGM wish to be granted a 4-year extension until 2015; however, staff favored limited time frames and recommended a 2-year extension. New legislation allows the governing body to grant a request for an extension with the signature of the governing body. Due to the practicality of tracking down signatures from all the Council members, OPG Staff also recommended that a second motion be made to authorize the mayor to sign the extension.

Mr. Wilkins wondered if this subdivision, which is in the 100-year floodplain, had experienced flooding during the last flood event. Mr. Kaufman said that there was no flooding on the lots of the subdivision. Mr. Jaffe recalled that when he and Ms. Wolken toured the flood event on Tower Street, they noticed the subdivision lots were on a terrace and therefore did not experience any flooding.

Mr. Haines had some concerns about authorizing the Mayor to sign for City Council. Mr. Jaffe recommended they discuss the merits of the extension before taking up the second motion. Mr. Kaufman explained that this subdivision was an effort between three property owners to meet the goals and objectives of connectivity and water/sewer and their design clustered the homes to take advantage of open space, riparian areas and trails. They think they have a good product and would like an extension to take the time to use every tool available to be able to hold off until the real estate market perks up.

Stacy Rye made the **motion** to extend the preliminary plat approval period.

Public Comment:

- Kari Brittain, a resident of Tox Drive, had an issue with the flooding during the last flood event. She had helped sandbag the existing homes on the property and noted that there was groundwater issues. She felt that each home built in the subdivision would redirect the water farther south. She also felt that the impervious surfaces will be redirecting the floodwater. She requested the Committee to not grant the extension and reexamine the subdivision.

Discussion on the motion:

- Mr. Haines would support this extension and felt that City Council should sign as the governing body so it does not cause problems in the future.
- Mr. Wilkins wondered if basements were allowed in the subdivision. Mr. Worley said that because this was in the 100-year floodplain, the homes would need to be built up two feet. Mr. Wilkins would like to hear from the City-County Floodplain Coordinator to know what he felt the impact of this subdivision would have on the floodwaters.
- Mr. Wiener would like to see some evidence of what happened to this property during the flood event. He requested an aerial photography of the flood be presented on Monday to allay fears that any of the properties would be in the floodplain. Mr. Klietz and Mr. Worley will prepare this for Monday. He will delay his vote until the City Council meeting on Monday.
- Todd Klietz, City-County Floodplain Coordinator, explained that the concerns they had with the development was access off of Tower Street was shown to be too low to provide dry land access to these parcels. After work was done on Tower Street, WGM re-surveyed Tower Street to show that road is high enough to ensure these lots will have dry land access. As far as any of the lots in the subdivision being overtopped and flooded, that did not happen. He is concerned about groundwater inundation, but conditions of subdivision

approval ensured that all structures would be constructed two feet above the 100-year floodplain to prevent this.

The Committee discussed the technicality of authorizing the mayor to sign the extension for the City Council.

- Mr. Childers pointed out that “members of the governing body” could cover any number of people.
- Jim Nugent, City Attorney, found nothing in the language in the statute creates several potential idiosyncrasies. There was nothing that prohibits the City Council authorizing the mayor to represent the governing body. He felt that rather than gathering all the signatures it would be more practical for the mayor to sign. The mayor technically is the executive branch. It is within the power of the City Council to delegate.
- Pam Walzer added that the Charter requires that the mayor sign and execute all documents on behalf of city following approval of the City Council. She felt if the legislature wanted all their signatures that they could sign and record their vote; however, she would like to have the mayor sign as well. She would like to put this on the list to be amended the next legislature.

Pam Walzer suggested amending the motion to have all council members sign with their vote recorded, so that way, some who has abstained, absent or vote no, their vote is recorded, too. Mr. Jaffe did not feel that it seemed necessary. He felt that the intent was that you end up with a document that is signed. Mr. Nugent explained that the public record of the hearing and there will be adequate documents to refer to.

Ms. Walzer made the **motion** that City Council authorizes the mayor to sign on behalf of the members of the governing body the mutually agreed upon extension.

The motion to extend the plat passed with Ms. Mitchell, Mr. Wiener and Mr. Wilkins abstaining. The motion to authorize the mayor to sign on behalf of the members of the governing body passed with Mr. Wilkins and Mr. Haines opposing.

3. 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. Chapter 20.05 “Residential Districts,” Chapter 20.10 Entitled “Business And Commercial Districts,” Chapter 20.15 Entitled “Industrial And Manufacturing Districts, Chapter 20.20 Entitled “Open Space And Public Districts,” Chapter 20.25 Entitled “Overlay Districts,” Chapter 20.40 Entitled “Use- And Building-Specific Standards,” Chapter 20.50 Entitled “Natural Resource Protection,” Chapter 20.60 Entitled “Parking And Access,” Chapter 20.65 Entitled “Landscaping,” Chapter 20.70 Entitled “Miscellaneous Regulations,” Chapter 20.80 Entitled “Nonconformities,” Chapter 20.85 Entitled “Review And Approval Procedures,” Chapter 20.90 Entitled “Administration,” Chapter 20.100 Entitled “Terminology,” Chapter 20.105 Entitled “Use Classifications,” Chapter 20.110 Entitled “Measurements and Exceptions.” ([Memo](#)) ([PAZ](#)) ([09/28/2011 PAZ](#)) (Returned from Council floor: 10/03/2011) **REMOVE FROM AGENDA**

MOTION: The Committee recommends that City Council 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. Chapter 20.05 “Residential Districts,” Chapter 20.10 Entitled “Business And Commercial Districts,” Chapter 20.15 Entitled “Industrial And Manufacturing Districts, Chapter 20.20 Entitled “Open Space And Public Districts,” Chapter 20.25 Entitled “Overlay Districts,” Chapter 20.40 Entitled “Use- And Building-Specific Standards,” Chapter 20.50 Entitled “Natural Resource Protection,” Chapter

20.60 Entitled “Parking And Access,” Chapter 20.65 Entitled “Landscaping,” Chapter 20.70 Entitled “Miscellaneous Regulations,” Chapter 20.80 Entitled “Nonconformities,” Chapter 20.85 Entitled “Review And Approval Procedures,” Chapter 20.90 Entitled “Administration,” Chapter 20.100 Entitled “Terminology,” Chapter 20.105 Entitled “Use Classifications,” Chapter 20.110 Entitled “Measurements and Exceptions.” with City Council amendments

Jen Gress presented a [PowerPoint](#) explaining the topics that still needed to be discussed for the Title 20 Maintenance package.

1. Additional information on Vertical Mixed-use and mixed use buildings

Chair Jaffe explained that he met with David Gray and OPG Staff and worked through the issues he had and came up with some language revisions to satisfy the ambiguities about vertical mixed use and what standards apply to it.

He would like to discuss that and the issues of the 13-foot ceilings. There is a requirement that there be 13 foot ceilings on the first floor and Mr. Gray felt there were some impracticalities to that requirement, that is to create a certain streetscape urban feel, but the practicalities is that the bathrooms, the closets, mechanical rooms, all have to have 13-foot ceilings and there is no reason for it. They found a way to keep the original intent and still meet the practical needs.

Ms. Gress went through the changes that had been made in vertical mixed-use and mixed-use buildings. There are several references to mixed use throughout the document, the Chapters being amended are

- 20.10 Business and Commercial Dist.
- 20.15 Manufacturing and Industrial Dist.
- 20.25 Overlay Districts
- 20.40 Use and Building specific Standards
- 20.65 Landscaping

Ms. Gress’ presentation outlined the changes that were made in more detail.

Chair Jaffe summarized that this was clarifying mixed use and vertical mixed use just to make sure things were explicitly clear. There was agreement between the architect and the staff as far as the intent, they were making the language clearer so there would be no confusion.

Ms. Gress referenced the additional issue sheet attached to the packet of information.

Ms. Walzer asked to pull the 13-foot floor-to-ceiling height forward to continue the discussion on the vertical mixed use.

Ms. Gress presented the suggested language on the screen that had been discussed but cautioned that this language had not been thoroughly vetted. The concern is being able to reduce the ceiling heights of bathrooms, mechanical rooms, etcetera and not have them be 13-foot like the commercial spaces. The idea of the regulation is to maintain a connectivity to the public spaces with the commercial businesses.

Questions and comments:

- Chair Jaffe understood that having a building categorized as vertical mixed use gave the owner benefits and relief from standards because of the desire to encourage vertical mixed use development in an urban setting. In order to get relief from the multi-family standards, you need to provide this urban feel.
- Ms. Walzer appreciates the overall intent, but wondered about existing, older buildings being renovate to be a vertical mixed-use and it would be cumbersome to have the 13-foot ceiling height. She wondered if a variance would be able to cover a case like this. She understood that new construction could require this. Ms. Gress explained that if the object of going through the process of using a vertical mixed use building is to obtain some of those reductions and benefits, then, yes, the option would be going through a variance process.

- Chair Jaffe was hesitant to make dramatic changes in the policy element of vertical mixed use as part of a late entry into a maintenance update. He thought addressing issues such as the mechanical areas, storage areas, etcetera was appropriate; he was not comfortable with addressing the larger picture of what are the standards.
- Mr. Wiener was okay with the language and felt that some of these issues should be addressed in future maintenance packages; or perhaps a public hearing to solicit opinions of what should be changed could be held.

Mr. Childers made the motion to accept the additional information on vertical mixed-use and mixed-use buildings.

The motion was unanimously approved.

2. Vehicle parking reduction

The required vehicle parking spaces were allowed to be reduced by one space for every eight long-term bicycle parking spaces; this reduction will be capped at 25%. Two alternatives regarding the ability to combine the reductions were presented to the Committee:

Mr. Wiener had suggested that reduction of vehicular parking could be combined, so Alternative Option 1 allowed parking reductions to be combined.

Ms. Hellegaard had felt that it was important to cap the amount of combinations, so Alternative Option 2 was limited to not exceed a total reduction of 25%.

Ms. Gress presented the different options for combining vehicle parking reduction and explained that capping the total at 25% may be a problem.

Questions and comments from the Committee:

Mr. Wiener wondered why the maximum was settled on as 25%. Ms. Gress explained that when they did the research of different cities, they felt that 25% was in line with these caps. Other cities range from 5 to 25%.

Mr. Wiener if Transportation or other TDMs had weighed in on this; he would be interested in their expertise.

Mr. Wiener made a motion to allow vehicle parking reductions in this chapter to be combined.

Discussion on the motion:

Renee Mitchell felt that people who ride bicycles or use transit also have automobiles; she cited developments that have overflow parking on the streets which cause safety problems; she reported that there are vandalism with cars parked on the street. She would like to amend the motion to cap the combinations of vehicle parking at 25%.

Discussion on the amendment:

Mr. Childers had no confidence that reducing the parking requirement would reduce the number of cars. He supported the 25 percent combined total cap.

Ms. Walzer could not support the amendment. She noted that the Spruce Street development known as Meadowgold made use of transit and bicycles and their parking lot is often empty. She does not want to prohibit shared parking and she liked the option to combine the reduction.

Marilyn Marler felt the amendment was a good compromise. She worried that some parts of Missoula may not allow enough parking. She asked if a variance could be requested in special cases and was assured that it could.

Mr. Wiener would not support the amendment. He called for the question. The vote on the question passed.

The motion to cap parking reduction at overall 25% failed with Mr. Wiener, Ms. Walzer, Ms. Wolken, Mr. Jaffe voting nay.

The motion to combine the parking reductions without a cap passed with Mr. Haines, Mr. Childers, and Ms. Mitchell voting nay.

3. Repair and expansion of nonconforming structures

In Chapter 20.80.030F, an alternative was proposed to allow the replacement of nonconforming structures if they should be intentionally or accidentally damaged. This would replace the sections on intentional or accidental damage of non-conforming structures. No new nonconformities could be created or increased. If a building permit is not obtained within 12 months, the nonconforming status is lost.

Ms. Gress explained that this allowed existing buildings that extend into setbacks to continue their building line in a straight line. If you were to demolish the existing nonconforming structure and a part of that structure extended into the setbacks, only that piece in existence prior to demolition is allowed to extend into the setbacks—you cannot continue the building line until you bump into another setback.

- Ms. Walzer wondered if this meant that a nonconforming house on the lot line could be replaced with a two-story house on the lot line. Ms. Gress explained that the building could not be allowed to go taller because of the reference in the language to Section 110.050.3, Measurements and Exceptions. Chair Jaffe thought that it might be worthwhile to make this explicit. He suggested adding a phrase to state “including the height.”
- Chair Jaffe explained that the next agenda item would delve into this more completely and what they were doing here is a stopgap of how this would sit in the interim while City Council addresses the next referral.
- Ms. Walzer understands the attempt to help folks out but to be able to completely replace a nonconforming structure when that is the one opportunity to get rid of the nonconforming status.
- Chair Jaffe said the underlying philosophy was to allow the existing nonconforming structures to be preserved, conserved and rebuilt if necessary; not to phase out nonconformities.
- Mr. Wilkins likes this new language. In his ward, there are structures that are impossible to bring out of nonconformity because of the lot size and other obstacles. He felt this language could help existing structures to be financed and refinanced.

Mr. Wiener made a **motion** to incorporate this language into Chapter 20.80.030F.

The motion passed with unanimous approval.

4. Staff amendments in Attachment H.

Ms. Gress presented the two recommended amendments that were housekeeping items. One noting mixed use buildings in subsection 1 of Table 20.10-2. Two, including a parking calculation for Tourist Homes. Mr. Childers asked that the dash be eliminated between Household Living and dependant on building type to make it clearer.

Ms. Walzer made a **motion** to accept these changes.

The motion passed unanimously.

Chairman Jaffe **directed** that the adoption of the amendment package be put on Committee Reports (unanimous consent).

Mr. Wiener asked that they see all the changes integrated in a new version of Attachment A to the memo.

4. Discuss clarifications to the regulations for non-conforming uses and structures in Title 20, Missoula City Zoning Ordinance, especially pertaining to 20.80.040 Nonconforming Uses, 20.110.050 C3 Exceptions to Side Setbacks, and 20.80.030 Nonconforming Structures. ([Memo](#))—Regular Agenda (Tom Zavitz) (Referred to committee: 08/22/11)
HELD IN COMMITTEE

Tom Zavitz gave a brief introduction of this discussion. This was referred to the Committee to discuss clarifications to the regulations for nonconforming uses and structures in Title 20. He noted that throughout the years, there have been various interpretations regarding adding onto existing nonconforming structures, staying within setbacks, following the building line, and making the building taller. The plan is to tighten up the regulations and clarify what is nonconforming, come up with a clear definition of what is nonconforming, if nonconforming status goes away with the abandonment of the building, if it can be expanded, and other questions that have come up over the years.

This topic will be continued to the next PAZ Meeting.

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 12:04 p.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.