

**MINUTES OF THE MEETING  
OF THE  
GREAT FALLS PLANNING ADVISORY BOARD/ZONING COMMISSION  
April 10, 2012**

**CALL TO ORDER**

The regular meeting of the Great Falls Planning Advisory Board/Zoning Commission was called to order by Chair Pro Tem Thor Swensson at 3:00 p.m. in the Commission Chambers of the Civic Center.

**ROLL CALL & ATTENDANCE**

Planning Board Members present:

Mr. Marty Byrnes  
Mr. Scot Davis  
Mr. John Harding  
Dr. Heidi Pasek  
Mr. Thor Swensson  
Mr. Nathan Weisenburger

Planning Board Members absent:

Mr. Bill Roberts  
Ms. Cheryl Patton  
Mr. Wyman Taylor

Planning Staff Members present:

Mr. Mike Haynes, Planning & Community Development Director  
Ms. Jana Cooper, Planner II  
Mr. Brant Birkeland, Comprehensive Planner II  
Ms. Phyllis Tryon, Sr. Administrative Assistant

Others present:

Ms. Patricia Cadwell, Neighborhood Councils Coordinator  
Mr. Dave Dobbs, City Engineer

Mr. Haynes affirmed a quorum of the Board was present.

**MINUTES**

Chair Pro Tem Swensson asked if there were any changes to be made to the minutes of the public hearing and regular meeting held on February 14, 2012. The minutes were received with changes.

## **BOARD ACTIONS REQUIRING PUBLIC HEARING**

### **Title 17 Land Development Code Amendments**

Michael Haynes, AICP, Director of Planning & Community Development, presented information on the Title 17 Land Development Code Amendments being proposed. He said that the proposed amendments were in response to daily inquiries received about the code, as well as clarifications. He stated he was entering the staff report into the record.

Mr. Haynes explained that the intent of the proposed changes to Accessory Living Spaces is to allow homeowners to have bonus living spaces in detached structures subject to certain restrictions. Staff in the Planning Office has been receiving many inquiries from citizens about redeveloping their properties or using their properties in different ways. This includes space in detached structures for game rooms, craft rooms, and also to create space for additional family members moving in. Specific proposed changes to the LDC include definitions for “accessory living space,” “garage, attached private” and “garage, detached private,” as well as “immediate family.”

The proposed amendments establish standards for approval, including requirements that accessory structures are secondary to the principal structure. The amendments also establish setbacks and set limitations on placement of doors and windows. The proposed amendments allow citizens reasonable use of private property while protecting neighbors. Restrictions are proposed to avoid incompatible uses and deter illegal conversions of a dwelling unit, such as renting an accessory living space, using such structures for home occupations, or adding full kitchen facilities.

The proposed amendments prohibit separately metering or addressing accessory living spaces, and limit square footage of such spaces to 750 square feet. Mr. Haynes stated that particularly in the R-1 zoning district, there have been incidents of homeowners converting detached structures into illegal second dwelling units. The proposed amendments do not address that issue directly, but are related in that they address accessible living space as opposed to second dwelling units.

Addressing the proposed creation of a Southside Overlay District, Mr. Haynes said the intent of the proposed District is to revitalize the south side of the Downtown area. Over time, property owners in the area have expressed a desire to expand the list of uses allowed in the District and primarily to allow some historical uses to be allowed again. The proposed amendment would establish the boundary of the Southside Overlay District, and allow certain uses in the District subject to certain conditions, particularly warehouses and light industrial, as there are many buildings in the District for which this was a former use. The proposed changes would also revise the zoning chart to allow some additional uses throughout the C-5 zoning district, particularly secondhand sales and indoor storage.

Mr. Haynes explained that another proposed amendment would allow Community Gardens in the C-5 zoning district to be permitted with administrative approval instead of the Conditional Use Permit (CUP) process. Fees for CUP are \$700 and the process takes about four months. This proposed change would also encourage revitalization in the C-5 zoning district around the Downtown area.

Mr. Haynes explained that proposed amendments to LDC for Downtown Parking would expand the authority of the Director of Planning & Community Development to waive minimum parking requirements for the C-5 zoning district on a site-specific basis. Also, current code requires that if parking requirements are waived or the number of required spaces reduced, there is a \$1,000 per space "payment in lieu" for the reduction in required parking. Mr. Haynes said this requirement has not been applied in recent years and the proposed amendment would eliminate that requirement.

Finally, Mr. Haynes reviewed the proposed changes in the LDC addressing certain driveways and curb cuts, and U-shaped driveways in single-family neighborhoods. Mr. Haynes concluded his presentation and offered to answer any questions from the Board.

Mr. Harding asked for clarification on the number of inquiries received by the Planning & Community Development Department about accessory living spaces. Mr. Haynes explained that City Planners are receiving several phone calls a week inquiring about what is permissible in accessory spaces. Mr. Harding said he thought that City code covered these items already, and asked Mr. Haynes to explain further. Mr. Haynes stated that while code addresses some uses of detached accessory structures (garages and sheds), it was not clear on the additional uses about which people are inquiring. He stated it was a balancing act to allow reasonable accommodation for private property rights while protecting neighbors. He also stated these proposed amendments are similar to regulations that cities across the country are adopting in response to changing conditions, changing needs of families, and the changing desires of home owners.

Mr. Harding asked City Engineer, Dave Dobbs, about changes in the maximum width of driveways. Mr. Dobbs explained that the proposed amendment affects some commercial and industrial driveway widths but not residential widths.

Mr. Byrnes inquired about Downtown parking boundaries in relation to the C-4 and C-5 zoning districts. Mr. Haynes explained that the parking district generally follows the C-5 boundary but not exactly.

#### COMMENTS BY PROPONENTS

Ms. Sue Strickland, 609 6<sup>th</sup> Avenue SW, Apartment #4, secretary for Neighborhood Council #2, said she was middle-of-the-road in her position on the proposed Title 17 amendments. She asked if the proposed document would be approved by item or in its entirety. Mr. Haynes explained that the Planning Advisory Board had the right to make

changes to the individual proposed amendments and propose that the City Commission accept those changes. She urged the Planning Advisory Board members to carefully consider comments presented at this meeting, because there were three blatant violations of the R-1 zoning rules on accessory structures that immediately came to her mind. She asked who would enforce the code in place and said that currently there has been no enforcement on the violations now existing. She also asked if the existing violations were going to be grandfathered in with these amendments, and if there was some way the City could provide zoning information to new home buyers.

Mr. Haynes said staff is aware of illegal conversions of accessory structures in the R-1 zoning district, and that staff will hold the line on this issue. He said staff has been working with those home owners to ensure they are not renting those spaces, and they will not be grandfathered in. One of the aspects of the proposed amendments is to clarify what is and is not allowed. He explained some specifics of the R-1 zoning regulations. He also stated the City is in the process of taking action on each of those violations and staff is working to resolve them.

#### COMMENTS BY OPPONENTS

Laurie Miller, 2029 1<sup>st</sup> Avenue SW, said she lives in the R-1 zoning district and is opposed to the proposed amendment on Accessory Living Space. She said the R-1 district provides enough land space for home owners to expand their dwelling without adding detached accessory structures that in fact become second dwelling units. She said this is an enforcement nightmare. She stated the City has explained that they rely on home owners to report violations, and home owners rely on the City to enforce the code. She said that she has felt extremely let down for several years on violations she has reported. She said more recently that Planner Jana Cooper and Director Mike Haynes has met with them to explain what is being done, but she stated that more is being done to help those who break the rules than those that want to protect the integrity of the neighborhood. She questioned how enforcement could be carried out. She thanked the City staff and the Neighborhood Council for being open and communicative.

Ms. Katie Hanning, 3217 4<sup>th</sup> Avenue North, stated that people will rent accessory structures eventually. She said it takes one weekend to add a kitchen to a structure at 3:00 in the morning when no one knows and no one pulled a permit, and she questioned whether existing code is being enforced. She said the codes are there and another amendment is not needed.

Susan Woith, 2100 Central Avenue West, said she lives directly north of a structure in violation of the R-1 zoning code. She said she has lived at her address for 50 years, but neighbors new to the area violate the code by building accessory structures. She said the neighbors built a shop structure and then rented their primary dwelling while living in the upstairs of the shop themselves. The City required the renters to move, which they did on December 1. The neighbor then moved into the primary dwelling. She said it is

the property owner's responsibility to know what City code requires, and it is the City's responsibility to enforce the code. She said she believes the City is allowing this neighbor, through these amendments, to keep the garage as an accessory living structure and she is totally against writing amendments to fix problems that are in clear violation of existing code. She said her Neighborhood Council has written a letter to the City asking that current code be enforced. She said she thought this matter was supposed to come before the Board of Adjustment, but it has not. She said she thinks the City cannot enforce the codes that are already in place and that accessory buildings are a can of worms. She questioned how the City can enforce the proposed amendments. She suggested excluding this particular piece of property that is currently in violation of code from the proposed amendments. She also said the structure on this property is in clear violation of being an accessory living space, as it has a full kitchen. She concluded by stating she was against this proposed amendment.

Mr. Tim Miller, 2029 1<sup>st</sup> Ave SW, said he didn't have a problem with people living with their families, but on his block there were two accessory structures. One has two addresses. He said there are already zoning laws in place and we should not give this violator a way to circumvent the current code. He said he opposes this proposed amendment.

#### PUBLIC COMMENT

Ms. Phyllis Hemstad, 931 1<sup>st</sup> Avenue NW, said that in the 1970s, she had spent 7 years serving on the Planning Advisory Board. Later, when the City was in the process of adopting code, she attended all the meetings and was a representative on her Neighborhood Council. The R-1 zoning was established with one family dwelling per lot, and that's how she would like to see it remain. She said perhaps realtors should advise those purchasing properties as to the zoning laws related to the property they are buying, and buyers should inquire about the zoning code. She said if people keep breaking the laws, then there are no laws.

#### ZONING COMMISSION DISCUSSION

Chair Pro Tem Swensson called for any discussion from the Zoning Commission. Mr. Haynes explained that a home owner in the R-1 zoning district followed the process for permitting for a legal garage but subsequently made an illegal conversion of that structure into a second dwelling unit. He stated he wanted to clarify that the proposed code amendments affect everyone in the City and are not intended to assist this property owner, nor do they change the need for him to remove the illegal improvements in his building. Mr. Haynes said the City does have the right to inspect the property when there is a complaint of zoning code violation, and has an obligation to inspect and permit structures for safety reasons. He said the City relies on citizen complaints for violations and has only one Code Enforcement Officer, and that it is difficult to verify who is actually living in a space. However, the City does follow up on complaints.

Mr. Haynes said the Planning & Community Development would be willing to have violators tear down illegal improvements, but there was no guidance from the City Commission to do so and no appetite to do so in the City as a whole. He stated that if the Planning Advisory Board wanted to recommend to the City Commission that P&CD require illegal improvements be removed, they would be happy to forward that recommendation, but the Department must currently work with what is acceptable in the City.

Mr. Byrnes asked if the proposed amendment on Accessory Living Space would help with enforcement. Mr. Haynes replied he did not think it would help or hurt, and that it is always a challenge to enforce zoning and building codes. Mr. Byrnes asked how the term, "clearly secondary," is defined. Mr. Haynes said that an accessory structure must be secondary in height, footprint, and area. Mr. Byrnes asked how the 750 square foot limit was determined. Mr. Haynes said it was a standard used by many other communities and was a reasonable size for accessory structures but still too small to be reasonably used as an independent living unit.

Ms. Miller again spoke and said her understanding was that the City has a variance process in place except for the R-1 zoning district. She asked if this was correct. Mr. Haynes stated that it is possible to request Conditional Use Permits in R-2 and R-3 zoning districts, and that those requests come before a different board. In this specific situation with the violation in the R-1 zoning district, the home owner was advised to go before the Board of Adjustment because his garage was legal but his use of the space did not meet legal requirements. Mr. Haynes reiterated that the proposed code amendments do not help this individual because the size of the structure does not fit an accessory living space. Ms. Miller clarified her question and asked if other zoning districts allowed secondary structures. Mr. Haynes stated that nothing in the proposed amendments limits second dwelling units in other zoning districts. In all other districts, citizens have the right to construct a second dwelling unit or to ask to construct one through the Conditional Use Permit (CUP) process through the Planning Advisory Board/Zoning Commission and then the City Commission. He stated that it was not the intent of these code amendments to have an effect on second dwelling units.

Mr. Byrnes inquired about setbacks in the proposed amendments for accessory structures. Mr. Haynes stated that the proposed amendments establish alternate side and rear yard setbacks for accessory structures to protect neighbors. Mr. Byrnes noted that the amendment actually provides another avenue for enforcement. Members of the public asked for clarification on setbacks for garages and accessory structures with the proposed amendment, which Mr. Haynes provided. Mr. Harding noted that there are multiple scenarios and he felt the current code was adequate in addressing these issues for accessory structures. He said he wasn't sure the proposed new rules clarify it further. He said there will always be violations and a need for compromise. He said the other four amendments seemed to be proposed with good reason, but adding rules to a process because of violations sometimes muddies the water. However, in light of staff's

efforts on this, he made a motion to adopt the five proposed Land Development Code amendments.

**MOTION:** That the Planning Advisory Board, acting as the Zoning Commission, recommends the City Commission adopt the proposed Title 17 code amendments.

Made by: Mr. Harding  
Second: Mr. Byrnes

Chair Pro Tem Swensson asked for any further discussion from the Board. Mr. Weisenburger inquired of a citizen in the audience if Mr. Hayne's clarifications had changed her opinion. It had not. Mr. Harding said that the proposed amendments do not allow second dwelling units in the R-1 district, but he was not sure this would fix the problem with violations.

Mr. Byrnes noted that enforcing existing code in the R-1 district was distinct from allowing home owners to develop accessory living spaces. He said the City has the tools for enforcement, and he was in favor of the proposed amendments. Mr. Davis asked Mr. Haynes if the proposed amendment was to simplify the process for home owners to get staff approval on accessory structures without going through the Planning Advisory Board. Mr. Haynes said the purpose was not to bypass the Planning Advisory Board but to clarify rules, limitations and uses for detached accessory living space. He reiterated that staff is working to enforce the code in the R-1 zoning district and will continue to do so in a reasonable way within the confines of the code. He stated that it is a balance between the private property rights of a home owner to have reasonable development of their property while protecting immediate neighbors and the character of the neighborhood itself.

There was no further Board discussion.

**VOTE:** All in being in favor, the motion passed.

Mr. Haynes advised the Board that the next step will be to take the Planning Advisory Board recommendation to the City Commission, which will then set a public hearing following public notice. He encouraged citizens to attend the public hearing of the City Commission.

### **BOARD ACTIONS NOT REQUIRING A PUBLIC HEARING**

#### **FFY 2012 UPWP Amendment 1 – Downtown Access, Circulation and Streetscape Study**

Mr. Haynes presented the Unified Planning Work Program Amendment 1 on behalf of Senior Transportation Planner, Andrew Finch. Mr. Haynes explained that the UPWP was approved by the Planning Advisory Board (PAB) in September 2011 and that the

plan is required in order for the City to receive Federal funds for transportation planning ("PL" funds). This proposed first amendment to that program also requires approval by the Transportation Advisory Committee (TAC), the Policy Coordinating Committee (PCC), the Montana Department of Transportation (MDT), as well as the Federal Highway Administration. This proposed amendment is related to the Downtown Master Plan, which the PAB approved in September 2011 and which the City Commission approved shortly thereafter. Since then, the PAB, TAC and PCC have approved preparation of a Downtown Access, Circulation and Streetscape Plan, and PL funds can pay for preparation of this plan, but an amendment to the UPWP is necessary to do so.

This amendment would increase Work Element 302 – Transportation Reviews, Analysis, Assessments & Consistency Determinations – by \$100,000 (the estimated cost of the Plan). Federal participation would be \$86,580, and the State match would be \$13,420. Mr. Haynes stated that the City has not expended PL funds it has access to and this is a worthwhile expenditure of those dollars. He concluded his presentation and offered to answer any questions from the Board.

There were no questions from the Board.

**MOTION:** That the Planning Advisory Board approve Amendment 1 to the FFY 2012 Unified Planning Work Program to include the Downtown Access, Circulation & Streetscape Study.

Made by: Mr. Harding  
Second: Mr. Byrnes

There was not further discussion.

**VOTE:** All being in favor, the motion passed.

### **Downtown Urban Renewal Plan (DURP) – Conformity with the Growth Policy**

Mr. Brant Birkeland, Comprehensive Planner II for the City, presented the staff report on the DURP - Conformity with the Growth Policy. He stated he was entering the staff report into the record. Mr. Birkeland explained that in October 2011, the City Commission adopted the Downtown Master Plan (DMP) as an attachment to the Growth Policy. The Plan provides for the redevelopment and revitalization of Downtown with a direct recommendation that the City establish a Downtown Urban Renewal Program and subsequent Tax Increment Financing (TIF) district. Mr. Birkeland explained that the Downtown Urban Renewal Plan and TIF are the primary tools for implementing and financing the DMP. The goal of the process is to use strategic public investment to catalyze further private investment.

Mr. Birkeland reviewed the tasks involved in the DURP adoption process, noting that the City has worked with a diverse group of stakeholders known as the Downtown

Development Partnership to complete the first four tasks of the process. The next step is for the PAB to review the DURP and recommend its conformity with the Growth Policy to the City Commission. Mr. Birkeland reviewed the Growth Policy themes of the DURP.

Mr. Birkeland concluded his presentation and offered to answer any questions from the Board.

Mr. Harding said that as long as 20 years ago, there was discussion about smart growth. He inquired if it is truly what the community wants to embrace. Mr. Birkeland stated that this is action on what has been talked about for 20 years. Mr. Haynes said that living Downtown may not be everyone's ideal, but many young professionals want to be Downtown. He believes there is a market here in Great Falls for this type of development.

**MOTION:** That the Planning Advisory Board recommend in writing to the City Commission that, in accordance with Section 7-15-4213, MCA, the Downtown Urban Renewal Plan has been found to be in conformance with the 2005 Great Falls Growth Policy.

Made by: Dr. Pasek  
Second: Mr. Weisenburger

**VOTE:** There being no further discussion, and all being in favor, the motion passed.

## **COMMUNICATIONS**

### Upcoming Planning Board Projects

- Shumaker annexation

Chair Pro Tem Swensson inquired whether there were any updates on the Shumaker annexation. Mr. Haynes said an application has not yet been received, but that Ms. Cooper will follow up.

### Project Status:

- Stone Meadows, Phase 2 – being held by Developer

### Meeting/Obligation Calendar, April 6, 2012 – April 20, 2012

A copy of the calendar is attached and incorporated herein by reference, and was received without comment.

### Petitions & Applications Received

- None

Good & Welfare

The next regularly scheduled meeting of the Planning Advisory Board/Zoning Commission is April 24, 2012. There does not appear to be any agenda items for this meeting.

**PUBLIC COMMENT**

There was no public comment.

**ADJOURNMENT**

The meeting was adjourned by Chair Pro Tem Swensson at 4:25 p.m.

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CHAIRMAN

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SECRETARY