



Advisory Group Meeting Summary

November 20, 2008

Members Present:

Lee Clemmensen
David V. Gray
Judy Smith
Kathryn Shepherd
Paul Sopko
Brian Walter
Ken Jenkins
Brent Campbell

Linda Lennox
Michael Nave
Dennis Druffel
Lori Davidson
Heather McMilin
Jan Hoem
Dick Ainsworth

Others present in the audience: 9 citizens

Note: These notes supplement the presentation and discussion that occurred during the Advisory Group Meeting on November 20, 2008. They are not meant to duplicate the presentation and they are not verbatim.

Overview of the meeting:

- ◆ Current process
- ◆ Module 2 (follow-up discussion from the September 10, 2008 Advisory Group Meeting)
 - Rattlesnake Sensitive Lands Overlay
 - Other Overlays
 - Landscaping Chapter
- ◆ Module 3
 - Overview
 - ADUs
 - Chapter 40 – Use and Building Specific Standards
 - Chapter 45 – Accessory Uses and Structures
 - Chapter 75 – Signs
 - Chapter 80 – Nonconformities

- Chapter 85 – Review and Approval Procedures
- Chapter 90 – Administration
- Chapter 95 – Violations, Penalties and Enforcement
- Chapter 100 - Terminology
- Misc. Comments from AG members

◆ Public comments

◆ Next steps

CURRENT PROCESS:

Kirk presented an overview of the process to date explaining it is on schedule and discussed what to expect in the next module. He reminded the group the method of review for the re-write process is to develop modules, review and get comments and then revise and consolidate the draft for additional review and consideration of the Advisory Group.

The meeting began with discussion of lingering issues regarding Module 2. At the last Advisory Group meeting there was a request to hold off on discussion regarding the existing Rattlesnake Overlay until the next meeting (now).

MODULE 2

Rattlesnake Sensitive Lands Overlay

- The area provides habitats for a large number of rare and declining species that are being affected by land development in sensitive areas. These sensitive lands adjoin a huge intact ecosystem, with the stream and forest lands they provide a natural corridor which animals migrate through for their major life stages. This large area includes the upper sub alpine montane to lower montane (Douglas fir forests), pine, savannah and foothills grasslands. The riparian areas and creek are essential critical habitat. The animals also use city open space land to funnel across to the North Hills.
- Concern was expressed about the declining foothills grasslands. From a carbon standpoint, these grasses store huge amounts of carbon in their roots, some of which go 15 feet deep. The forests are relatively secure, but lower grasslands which are integral to the system are threatened.
- Some view this area as functional open space. The Sensitive Lands Document recommends that people build closer to the road to allow for the natural flow of animals across the land. This overlay is intended as a reference so people could plan in ways that would maintain the functional open space that is closer to development.
- There was expression of support to retain the Overlay in the updated City zoning code.

Potential Downtown Overlay:

The idea of coordinating this process with the Downtown Master Plan for a potential downtown overlay was discussed. The zoning update could include proposed text for a proposed overlay (with language generated through the Downtown Planning process). Applying the text to a specific area of the city (Map amendment) would not occur through this process. Alternatively, the revised zoning ordinance could include a “placeholder” or reserved section for eventual insertion of a downtown overlay zoning district.

Historic Overlays:

Concern was raised that the Historic Overlay was being removed. Laval stated that this ordinance is not removing the ability to establish overlays; Overlays can still be developed and proposed. The only existing, applied Historic Overlay is the Fort Missoula Historic Overlay and it remains in the document (unchanged). Enabling language is intended to be in the ordinance. A place holder for the potential Historic District Ordinance is also considered.

Landscaping Chapter:

The amount of required landscaping was still a concern. Too many shrubs and trees required, and the landscaping area a car overhangs adjacent to a parking space should count toward the landscaping requirements. [Staff note: We have not increased the landscaping requirements over the existing (fairly new) landscaping requirements.]

MODULE 3

Overview:

This module includes Use and Building Specific Standards; Accessory Uses; Miscellaneous Uses; Signs, Nonconformities; Review and Approval Procedures; Administration; Violations, Penalties, and Enforcements; and Terminology.

Accessory Dwelling Units (ADUs)

Kirk began by speaking directly to the Accessory Dwelling Unit provisions proposed as part of Module 3. Kirk informed the group that he had already heard many questions and concerns about the ADU provisions and that it was clear that some significant reworking of the proposal was in order. He also commented that:

- The proposed ADU section may not be appropriate in all areas of town, but there are neighborhoods that may be interested in applying it.
- He sticks by his commitment to not harm the existing character of established neighborhoods of single family residential districts.
- Recognize the concern over the perception of upzoning.
- Revised regulations will not allow ADUs as-of-right in single family residential zoning districts
- May explore an overlay zoning district (which would enable the filing of formal protest petition and would be decided by City Council) or conditional use (that requires a public hearing and can be decided on a case-by-case basis depending on location and design) as ways to implement

When asked why the use was proposed in the first place – Kirk responded:

- Interest in looking at ADUs was mentioned in the earlier listening sessions.
- It is something to explore when considering modernizing tools and broader options for residential building types.

Advisory Group comments regarding ADU proposal:

- Could see it as a tool, but strongly disagree with it being applied to all zones.
- Support for looking at ways to provide affordability options within the community.
- In the University neighborhood specifically, it is important for the University to address housing for students and hopefully free up traditional housing in the neighborhood.
- Recalls an accessory unit being allowed based on neighborhood agreement and established with a deed restriction. However, a caution was raised with that approach because neighbors are not often inclined to say no.
- Suggest different regulations or standard for each district and also no ADUs in some districts.
- Concern over restricting it to just particular districts and caution against creating divisive districts – setting up inequities for how the community deals with affordability as well as change.
- Appreciate taking another approach to the concept and seeing more details in the future.
- Acknowledges concerns but hopes to find a way to condition it in certain areas.
- The tool could lend itself toward diverse housing types and help with affordability.
- Caution against isolating its use to very few areas and would not perceive that as fair. Maybe it could be considered more broadly if it includes a right to protest as part of the process.
- ADUs are not new to older neighborhoods. They've taken their place as garage conversions and especially on corner lots. Eventually, they seem to have been absorbed by the neighborhood.
- The impact of ADUs in existing neighborhoods was historically much less than it would be now with increased enrollment at the University. The impacts would be huge in the University neighborhood.
- A concern over accepting them as-of-right is that there would be no due process and citizens would not know they are being developed. That would present a much different character to a neighborhood and challenge the expectations of the base zoning.

Other comments:

- Agree that ADU may be okay where other residential building types already exist (other than single family districts).
- Suggest that if they are allowed they should be protestable.
- Concern was raised over how to enforce the “owner occupied” stipulation in the draft. Without enforcement, both units could turnover toward rental.

- Concern regarding overloading existing infrastructure such as alleys and the impacts of additional parking.

As in previous meetings, Kirk went around the group of Advisory members asking for their concerns and comments regarding Module 3, the following is an overview of remaining comments (besides ADUs) presented by the Advisory Group Members.

CHAPTER 40: SPECIFIC USE AND BUILDING STANDARDS

Bed and Breakfasts

- Why include it as a conditional use in all Residential Zones?
- You would hardly ever see them rejected based on the conditional use process.

Casinos/Taverns

- Concern over removing the CLB and CG overlays.
- Would like greater than 300' separation from residential neighborhoods.
- Went through proposing standards with the neighborhood council; look at past efforts.

Gas Stations

- Don't like the elementary requirements.
- This approach needs to recognize the differences between large and small businesses. If those minimal standards could be met you could see a gas station of any size proposed. There should be conditions based on the size of the gas facility (i.e. not a truck stop or fueling station).
- This approach means citizens lose the opportunity to protest.

Lot Line Housing:

- May be okay in new development but not want to see them plunked down in existing neighborhoods.
- How does it work with Fire Code?
 - Kirk responded that easements have to be established from neighboring lots in order to address fire concerns.
- Support for this development pattern and could see them in existing areas as long as they meet the established standards.
- Suggest including an elevation drawing of a lot line development next to regular lots. That will show that there is no discernable difference.

Temporary Uses:

- Not want to see them in Residential districts.

CHAPTER 45: ACCESSORY USES

Accessory Structures

- Suggest more controls including the need for the structure to be of the same quality and architectural treatment as the main structure.
- Why do we need to require a 10' setback? Building code prescribes separation between structures.

Home Occupation:

- Thinks it is too permissive. Don't like the ability to have three visitors or the ability to use accessory structures.
- Needs to be regulated for noise.

CHAPTER 75: SIGNS

- Coordinate sign issues with DRB and staff.
- Encourage the exception for Historic signage, especially in the CBD.
- Appreciate the clarifications
- More work needs to be done on definitions
- Add "fabric" to material lists when describing canopies.

- Because of some of the district combinations there are some changes proposed to maximum areas. Need to check on those changes.

CHAPTER 80: NONCONFORMITY:

- Questioned why the 1950 reference and the reference to establishing legal nonconformity within one year of platting was taken out. The time frame element was raised in the Judge Haines ruling in the case of Ballas vs. the City.
- .040.C Expansion of Use: Why the change?
 - Kirk responded that additional flexibility regarding nonconforming uses and structures could be helpful in encouraging preservation of existing buildings and local businesses. The “trick” is to not extend that flexibility to uses or nonconforming situations that may be harmful to neighborhoods.

CHAPTER 85: REVIEW PROCEDURES

GENERAL

- Would like a focused break-out discussion on this topic and detailed comparison to current practice.
- Hopes that the procedures are streamline. Suggest analyzing the processes to see whether they would be streamlined.
- Continue to clarify who has the authority to review and approve which procedure?
- How much authority to review has changed between the DRB and the BOA?
- Look at how much is established for alternative compliance vs. variance.
- Concern over the number of administrative decisions and the need to stay consistent.
- Hope that administrative processes are streamlined and there is a clear line of authority.

VARIANCES:

- Chapter 85.080. Variances, A, Intent: Suggestion to delete “practical difficulties.” That reference is not in State law with regards to considerations for the Board of Adjustment.
 - Kirk mentioned that the city’s legal counsel, Jim Nugent, instructed that “practical difficulty” remain in the ordinance because the Airport Compatibility Act specifically utilizes the phrase “practical difficulty” with respect to variances. [Staff note: this refers to MCA Sect 67-7-303 pertaining to variances]. The suggestion to delete “practical difficulty” had been taken to City Council just in the last few years and council decided not to strike the language.
- Understands the reason for changing variance time from one year to two years.

ADMINISTRATIVE ADJUSTMENTS:

- Okay in concept and appreciates that this would lessen the load on BOA.
- Don’t want to see it applied to setbacks. It is a typical request of the BOA and it really does depend on the circumstances. The BOA is best to discern.
- Provide an example of de minimus lot area:
 - Someone owns a lot that is 2,995 square feet and the zoning district requires a minimum of 3,000 square feet. A decision of de minimus could allow the use of that lot depending on the criteria used for determining de minimus.

CHAPTER 90: VIOLATIONS, PENALTIES AND ENFORCEMENT

- Add something about “acting” on a violation within a specific time period.

TERMINOLOGY:

- Refer to the building code for the definition of “dwelling unit.”
- Clarify the diagrams for setbacks vs. yard areas in the Terminology Section. Shown as two different definitions but the same kind of sketch.
- Measurement for “glazed area” should be from outside of window frame.
- Look at International Building Code for definition of “townhouse.”

MISC. COMMENTS:

- Use “shall” instead of “must.”
- Use the term “building code” and not state the specific code.
- Provide additional diagrams to show setbacks and measurements between structures in various situations.

- Give the staff the proper authority to do their job.

OTHER COMMENTS FROM THE AUDIENCE:

- Clarify what constitutes a second floor for signage. A mechanical room shouldn't be a second floor.
- Address color of lights for signage.
- Concern was expressed about OPG staff being consistent when making administrative decisions.
 - Kirk responded that he is being very prudent about the zoning officer roll. It's appropriate that the Zoning Office allow for adjustments for things that are not major decisions. He is using the administrative adjustment discretely and expressly identifies the issues that they may make a call on. There may be some reporting that could occur. This process responds to the desire to streamline.
- As long as there is an appeal process, not that concerned over the zoning officer decisions.
- History of "practical difficulty":
 - In the early 2000's signs were handled by the BOA and practical difficulty was included at that time. Then sign variances were split up and part given over to the DRB for decision. At that time, someone in the audience warned that they needed to address "practical difficulty" but that did not happen.
- Important that variances expire.
- A variance should be tied to a specific plan and/or building and not allowed to change.
- Address better record keeping for special procedures.
- Change the term "lapse of approval" to "expiration of approval" for variances.
- It was suggested that expecting zoning staff to assist in Appeals of Administrative Decisions is a conflict of interest and that staff may not be able to be objective. Having both parties being advised by the City Attorney does not seem fair either.
- Concern that the context of the rewrite has changed and expanded beyond just a rewrite and addressing inconsistencies. It was not intended for new ideas.
- Disagree with the change to maximum height. Reject that argument that houses could be built using the modified height on flat land to beyond the 30'. Reject that the maximum height should change to 35'.
- Concern that lot lines are not excluded from existing neighborhoods.
- Would like to see this project address massing standards in order to address character of existing neighborhoods.
- Significant concerns over ADUs.
- The renaming of districts appears confusing. Don't like the R1 reference.
- Unclear why it is necessary to increase the density of PUDs by 50%.
- Suggest that Lot Line development should only be allowed to occur in the same area and limit the number of them.
- Should not allow on-street parking because of concern for letting emergency vehicles pass.
- Suggest looking at how "hardship" is dealt with in the County. Could delineate the issues of what could be a hardship and get rid of practical difficulty.
- Concern over ADU impact on alleys and might they lead to the need to widen the alley.
- Disagreement with 35' height for R5.4
 - Kirk clarified that combining the modified height exception and the exception for 20% additional height for a 7/12 roof pitch, construction could go above the maximum height of any zoning district by approximately 9'. Suggesting 35' is, in a sense, a downzoning from all the exceptions. Thirty five feet without exceptions and no modifications would be fair, clear, and simple. Early focus discussion led to a suggestion of 33' and 2 stories maximum in the new R5.4 District.
- Important to keep design integrity in tact. Caution against getting caught up in the minutia and splitting hairs when we have a greater need to get the code adopted.

NEXT STEPS:

- Community Workshop on December 10, 2008
- The next Advisory Group meeting will be December 11, 2008.