

PLANNING AND ZONING COMMISSION
January 13, 2020

The City of Jackson Planning and Zoning Commission met in regular session in the Council Chambers of the Jackson City Hall at 5:15 p.m. on January 13, 2020 with the following Commission members present: Tim Beck, Dave Lappe and Bob Dorschner and City Zoning Administrator/Recording Secretary Dave Maschoff. Also attending was City Administrator Matt Skaret, City Attorney Brad Anderson and Community and Business Development Specialist Thomas Nelson of Community and Economic Development Associates (CEDA). Planning Commission members Nathan Peterson, Dennis Hample and Donnie Schoenrock were absent.) (A quorum of the Planning Commission was not present.)

CALL THE MEETING TO ORDER

City Zoning Administrator Dave Maschoff opened the January 13, 2020 meeting of the Planning and Zoning Commission. He noted a quorum was not present.

APPROVE THE MINUTES FROM THE DECEMBER 9, 2019 PLANNING AND ZONING COMMISSION MEETING

Maschoff said because there was a lack of a quorum present at the meeting, action on approving the December 9, 2019 minutes would have to take place at a future meeting.

CHOOSING A NEW PLANNING COMMISSION CHAIRMAN

Maschoff noted former Chairman Randy Ringquist submitted his resignation at the December 9th meeting. He asked if there were any volunteers to serve as Chairman.

With no volunteers indicating they wanted to serve as Chairman, Maschoff said the matter would be discussed at a future meeting.

CONTINUE DISCUSSION ABOUT ALLOWING A PROPERTY OWNER TO BUILD AN ACCESSORY BUILDING ON AN ADJACENT VACANT LOT IF THERE IS NO RESIDENCE ON THAT LOT

Maschoff noted the main item at the January 13th meeting was the continued discussion about whether a property owner should be allowed to build an accessory building on an adjacent vacant lot if there's no residence on that lot. He said hopefully this issue can be resolved before we get into the start of the construction season in a couple of months.

Maschoff thanked City Attorney Brad Anderson and Community and Business Development Specialist Tom Nelson of Community and Business Development Associates (CEDA) for attending the Planning Commission meeting.

Maschoff pointed out City Attorney Anderson provided a copy of the proposed amendment to Ordinance 153.037. He noted copies of the proposed amendment to the Ordinance were distributed to the Planning Commission members.

Maschoff explained City Attorney Anderson and Tom Nelson attended the Planning Commission meeting to share ideas regarding the proposed amendment.

Skaret asked if City Attorney Anderson wanted to start the discussion. Skaret noted there are several different things that are being addressed in this draft ordinance.

Skaret said the first item is unrelated to the topic at hand. He said that had to do with changing the maximum size of the floor area of an accessory building to 1,000 square feet. Skaret said currently the maximum size is limited to 720 square feet. He said that has been discussed about for a while. Skaret said the increase in the floor size is being wrapped into one ordinance.

Skaret explained the rest of the proposed amended ordinance relates basically to the metes and bounds issue that the Planning Commission has been talking about for the last couple of months. Skaret said it kind of ties into the overall concept of building an accessory building or garage on a lot that's immediately adjacent to a lot with a house. Skaret said let's say you own a house and then you buy your neighbor's property with a dilapidated house on it and tear the house down in order to put a garage on that adjacent lot. Skaret said right now our current City ordinance says you can't do that.

Skaret said he would turn the discussion over to Maschoff, Attorney Anderson and Nelson.

City Attorney Anderson said one thing, if he could point out, is that we had a good discussion the last time he attended the Planning Commission meeting to discuss this issue.

Attorney Anderson said he doesn't think anyone really disagreed about putting a detached accessory building on a vacant lot that was next to a lot that a person owned.

Attorney Anderson said he thinks the issue that kept coming up all the time was what if down the road the person sells the house and keeps the detached accessory building so now it's not an accessory building any longer. He said the question was what would the City then do? Attorney Anderson said the Planning Commission talked about the possible ways of dealing with that. He said that was kind of a hang-up and bothered everybody.

Attorney Anderson pointed out the addition to the proposed amended ordinance that is underlined tries to address that issue. He explained he basically kind of brought it to extremes.

Attorney Anderson said if you no longer own both properties, then the detached accessory permit is no longer applicable and you have to cease that and remove the building. He said that's kind of the worst-case scenario. Attorney Anderson noted what was talked about before by the Planning Commission was if that happened, the property owner couldn't add on to the accessory building or improve it and couldn't do nothing with it. He said a person could maintain the accessory building but when it was used up, it was gone.

Attorney Anderson said the concern he had was how enforceable was that. He said you're talking about taking away somebody's property right when you've originally permitted it and it might be an issue.

Attorney Anderson said he and City Administrator Matt Skaret talked about the language in the amended ordinance. Attorney Anderson said the language can be put in the ordinance and see if anybody contests it. He said if they fight it, they fight it, if we lose, we lose. But Attorney Anderson said he doesn't think it's going to change the position the Planning Commission had at their last meeting. He said the Planning Commission is not going to give the property owner a permit to improve that property or expand that building or do anything like that.

But at the same time, Attorney Anderson said the City is being clear and upfront with the property owner with the language in the amended ordinance. He said this only applies to buildings that are going to be used by the property owner and the property owner's contiguous house.

So, whether you think this is a good thing or bad thing, Attorney Anderson explained what we tried to do here is address that issue and be real clear and up front about it. He said it might not be 100 percent enforceable but until someone challenges it, who knows? Attorney Anderson said put the language in the ordinance, try to enforce it and if the judge says, no, you can't do that, well then fine. Attorney Anderson said that's all he was doing with the amended ordinance. He pointed out the changes he made he underlined. Attorney Anderson said he took out the words "vacant lots" and inserted "tracts or lots" because it might not be a vacant lot when a person purchases it. He noted it had been discussed in the past about tearing down old houses and the like. Attorney Anderson said it's up to the Planning Commission on what they want to do.

Beck commented what if a person sells their house and they have a garage on the adjacent lot. He asked if that person then builds a new house on the lot where the garage is located, will they then fall back into being compliant with the City's ordinance and there will be no problem?

Attorney Anderson said that's correct. He noted the person can take that detached accessory garage and build a house onto to it.

Lappe said he thinks the Planning Commission's biggest concern was that someone purchases the lot next to them and builds a shed or garage on the adjacent lot and then they turnaround and sell their house and just keep the garage and start putting stuff in there. He said that may pose a problem for the neighbors.

Attorney Anderson noted the language in the proposed amended ordinance. He pointed out you can travel to Lakefield and see some pretty good examples of detached accessory buildings that are pole barns. Attorney Anderson said he wasn't a 100 percent sure, but he thinks there's some sheds with 12-foot sidewalls and they look like a beautiful machine shed for a farm but they're in a residential neighborhood.

Attorney Anderson said the Planning Commission has protection in the ordinance. He said the property owner is going to have to prove to the Planning Commission that the accessory building is going to look well within that district. Attorney Anderson said it's going to have comparable or compatible siding, roofing and height. He said all those things will have to look appropriate for the neighborhood.

Dorschner mentioned about an applicant in the past that wanted to build an accessory building across the street. He said how does that work?

Attorney Anderson said that was a good question and the amended ordinance is very specific about that.

Attorney Anderson read from the proposed amended ordinance, "*The tracts or lots cannot be separated by a public or private right-of-way or a natural or manmade physical barrier*". He said if the lot is across the street, that's a public right-of-way. Attorney Anderson said the lots have to be physically touching one another.

In instances where someone wanted to build an accessory building on an adjacent lot, Maschoff asked Attorney Anderson if those requests would have to come before the Planning Commission each time and be treated as a variance or conditional use permit.

Attorney Anderson said such requests in those instances should probably come before the Planning Commission each time and then a recommendation made to the City Council for approval. He said then they can issue that written, recordable exception to the City's Code that is recorded in the courthouse. He said that would be a good thing to put in there.

Maschoff asked if the exception would be its own type of permit for this purpose, or would it fall under a Conditional Use Permit.

Attorney Anderson said he thinks it would be a separate permit for this type of exception. He explained a detached accessory building is a permitted use and doesn't require a conditional use or interim use permit. Attorney Anderson said the exception does require a separate clear track of approval through the Planning Commission and the City Council.

Skaret noted the proposed amended ordinance states "*The property owner must apply to the City for an exception, approved by the City.*" Skaret asked if we wanted to clarify the language to say approved by the Planning and Zoning Commission and City Council.

Attorney Anderson said that language could be added. He explained approved by the City allows you to set your own policy as to what tract the exception should follow. He said certainly adding the language to have it approved by the Planning Commission would make it absolutely clear.

Maschoff said a form could be developed just for the purpose of these types of exceptions.

Maschoff said he and Economic Development Director Tom Nelson had a discussion about the same issue of allowing property owners to build accessory buildings on a lot they may have purchased adjacent to them. He said there's a lot of different ways you could look at this issue. Maschoff said he invited Nelson to attend the Planning Commission meeting to share his thoughts on this whole big issue.

Nelson explained everything he was about to say was coming from the lens of looking at housing. He said the EDA is constantly looking at housing in different types of residential areas. Nelson said he and Maschoff talked about what's the goal of what we're talking about today.

Nelson said the caution he would have in changing the ordinance is the potential of getting rid of possible residential lots. He said as it currently stands, they're not able to do that. Nelson said part of the issue is that the City does have some lots that are standing empty or have dilapidated buildings on them. That being said, Nelson explained a lot of the communities that CEDA (Community and Economic Development Associates) works in are smaller communities and often times they struggle with the inability to purchase land due to unwilling sellers surrounding the community and/or finances.

Nelson said Jackson obviously has subdivisions so the City has been able to alleviate that in some ways. He said one caution would be in the future if we don't have a subdivision area and we're getting rid of residential lots. Nelson said that would be the potential effect of the proposed amended ordinance.

Nelson said obviously there's a lot of other concerns about the makeup and the look of the community, but for this point he's not really talking about that. He said he's talking more about if we're building an accessory building on an empty lot, we're essentially getting rid of a potential residential lot. Nelson said that's the caution he would have.

Nelson said right now the City of Jackson has plenty of space in our subdivision but what if that were to fill up in five years. He noted the City is right in the middle of a lot of different street construction projects. Nelson said it's going to cost a couple million dollars to do another subdivision verses if the City has essentially existing, already paid off, infrastructure in areas of town.

Nelson said another approach could be to look at this and say do we want to open up the ability to do that or do we want to look at ways to improve our zoning to encourage housing to be rebuilt in residential areas. He said obviously there's a concern about people being able to use the land as they wish. Nelson said right now, they already can't do this. He said if we were to pass the amended ordinance, then it is definitely something that we told them they can use and they should be able to use it as they want.

Nelson said the good thing of the amended ordinance is we could see the encouragement of dilapidated houses being brought down. But Nelson said he and Maschoff have already had a request come in where it's not a dilapidated house. He said in fact, there's a house in town that is currently being rented out and someone inquired about if this amended ordinance passes, could they tear down that house and put a garage on that lot adjacent to them. Nelson said that's a concern strictly from the housing lens that we could see people buying lots and doing that in order to get their garage and such. Nelson said that's the biggest thing he would caution about. He said there are some lots that are not buildable and that's something the Planning Commission could look at.

Nelson said if the lot was truly unbuildable and it's going to sit empty, why not build a garage on it. But specifically, Nelson said if there are lots in town that you could rebuild a house on, it might not be now or in the next 10 years, but in 10 or 15 years if we're running out of space to grow the community, we might be saying I wish we could put a house back on that lot where we let some of those garages be built. Nelson said that's the biggest caution he would give.

Maschoff thanked Nelson for his comments and said he brought up some good points. Maschoff asked Attorney Anderson if there is, in essence, kind of a safeguard in this proposed amendment to the ordinance in that each situation would have to come before the City to get that exception to construct an accessory building on an adjacent lot. He asked if that would pose as somewhat of a safeguard so a good livable place isn't torn down.

Attorney Anderson said he thinks that's in the proposed amended ordinance. He noted the ordinance says it has to be approved by the City so that would have to be each and every case.

Nelson asked if a person would need to get approval before they tear a house down.

Attorney Anderson noted the person would need to get a demolition permit from the City so that should trigger some attention from the City.

Attorney Anderson said Nelson raises a good philosophical question. He said he thinks that's really the real question here is do you want to prevent this. Attorney Anderson said the old City Code only permits detached accessory buildings on the same lot where a person has their house. He said the proposed amended ordinance is opening it up so you can put accessory buildings on additional property that you may purchase. He said he doesn't know the right answer to that.

Beck said let's say you have a house on a small lot and you want to buy the lot next door and tear the house down not to build another building, but just to have a bigger lot. He noted you can't really stop a person from doing that.

Attorney Anderson agreed the person can't be stopped from doing that.

Maschoff said sometimes people do that just to have space between them and the neighbors.

Attorney Anderson said that doesn't really cost anything. He said he thinks the City just wants to keep track of what's going on, that's all.

Even if they don't want to build a detached accessory building, Beck said that someone could just buy the adjacent lot and tear a house down to have a bigger lot.

Dorschner noted he purchased the empty lot next to his property.

Attorney Anderson said he doesn't think you can deny a person from obtaining a demolition permit and tearing down a house on a lot that they've purchased. He said the demolition permit just helps the City keep track of what's going on. He noted it doesn't even cost anything to obtain a demolition permit.

Beck pointed out if down the road he wanted to build a garage on the adjacent empty lot, he would have to go through the process with the Planning Commission and City Council. Beck said as far as lots, the City really can't stop someone from buying the lot.

Lappe said if someone came back to get permission to build a garage on an adjacent empty lot, notices would be sent to all the neighbors about what is being planned. He said if you have a neighborhood that's really jumping up and down saying they're against it, that would have to be taken into consideration.

Maschoff said this exception, he would assume, would be the same as a conditional/interim use or variance where we would have a public hearing and neighbors would be notified.

Attorney Anderson said the purchasing of lots as mentioned by Beck has been going on for years. He pointed out all the houses the Co-op purchased near the elevator years ago. Attorney Anderson said the Co-op decided to purchase those houses and lots for safety reasons. He said a lot of those houses weren't in the greatest shape and didn't have much of a price tag on them. Attorney Anderson said the only people that could afford them were young people who had families. He said the young children would be playing on the street where there were a lot of tractors, trucks, wagons and semis travelling. Attorney Anderson said the Co-op decided to buy up the lots and clear that area out.

Lappe pointed out if someone builds a shed on a lot, the tax valuation will go up.

Nelson noted a lot of communities may take a different approach to say how can we do things to encourage houses to be rebuilt on these lots in order to raise the tax revenue. He noted that the City can't stop someone from purchasing a lot, tearing down the house, and leaving the lot bare.

Nelson said right now it's not that big of a problem and it's not something he's trying to fight against. He said he's just posing the question of what do we do for housing. Nelson pointed out when the City moved forward with the subdivision, they purposely had stipulations that people are not allowed to purchase lots next to each other. He said because it's new construction, the City has to get the tax revenue.

Even if the proposed amended ordinance is approved, Nelson said building regulations should be looked at to see what the City can do to encourage more houses to be built on these infill lots. He said it would be really good to look at that because it's a lot cheaper for the City if we already have the existing infrastructure than a new subdivision that would cost millions of dollars to develop.

Nelson said he just wanted to share those thoughts about the proposed amended ordinance regarding the potential effects it could have on the residential density we have in our existing areas.

Maschoff said Nelson's comments were appreciated.

Maschoff said he and Skaret had talked about making lots available if a house burns down or is removed. He said maybe some of the setbacks and associated issues could be looked at for certain cases. He said that's more food for thought and maybe for another discussion.

Skaret said, for example, if the house next door has a fire and that building does not meet the setback requirements. He said the ordinance says if 50 percent of the value or less is damaged, the house can be rebuilt exactly where it is. However, Skaret said if that house is destroyed by fire more than 50 percent of its value then the property owner can rebuild the house but they have to meet the required setbacks.

Beck noted a house in Jackson where there had recently been a fire and is going to be torn down. He said that lot is not big enough to hardly build anything on. Beck also pointed out some areas in town where the current garage is on the property line or driveways combined.

Maschoff noted one residence on Sixth Street where two residents share the garage because the garage is located right on the property line.

Beck said in the older parts of town, so many of the houses are so close together that if a house burned down, really all you're doing is making your yard bigger because the lot is not big enough to build a house on with the setback requirements the City has.

Nelson said that would be a separate discussion. He said the proposed amended ordinance, in some cases you could see, encourages essentially a reduction in the amount of housing. Nelson said he could look at other communities and do some research for the Planning Commission to explore what ways to maybe make those lots more buildable. He said eventually a lot of houses are going to wear out and we're going to lose them. Nelson said maybe it's different types of housing that need to be rebuilt on those lots but it would be nice to have that availability back.

Nelson said right now lot space for new houses is not a problem because of the subdivisions that have lots available. He said he's trying to look really ahead as far as the goals of the EDA and housing in order to continue to see the community hopefully grow in the future.

Dorschner commented that we have to make the downtown grow first.

Nelson said he doesn't disagree with that statement at all. He said he's looking towards the future if the City is looking for places to grow and what we're going to need to do.

Nelson said he would like to give the Planning Commission an update sometime about the EDA's programs and efforts to attract new businesses to Jackson.

Maschoff said because there was a lack of a quorum, a vote to make a recommendation on the amended ordinance to the City Council could not be taken at the January 13th meeting. Maschoff asked if there was a consensus on the amended ordinance and whether to bring it forth at the next Planning and Zoning Commission meeting.

The consensus of the Planning Commission members present was to bring it forward at the February 10th meeting.

Maschoff thanked City Attorney Brad Anderson, Economic Development Coordinator Tom Nelson and everyone for attending the meeting.

ADJOURNMENT

With no further business, the Planning and Zoning Commission meeting was adjourned at 5:48 p.m.

David A. Maschoff, City Zoning Administrator

