

DEPARTMENT OF COMMUNITY SERVICES
LAND USE PLANNING DIVISION
MULTNOMAH COUNTY PLANNING COMMISSION

MINUTES OF OCTOBER 3, 2016

- I. Call to Order:** Chair John Ingle called the meeting to order at 6:30 p.m. on Monday, October 3, 2016 at the Multnomah Building, Room 101, located at 501 SE Hawthorne Blvd., Portland, OR.
- II. Roll Call:** Present - Present – John Ingle, Vice-Chair Jim Kessinger, Katharina Lorenz, Bill Kabeiseman, Susan Silodor, Alicia Denney, Jeremy Sievert, and Timothy Wood
Absent – Chris Foster
- III. Approval of Minutes: August 1, 2016.**
Motion by Wood; seconded by Sievert.
Motion passed unanimously.
- IV. Opportunity to Comment on Non-Agenda Items:**
None.

- V. Hearing: Accessory Building Provisions (PC-2016-4940)**
Adam Barber, Multnomah County Senior Planner, stated that this project was intended to more clearly define when a structure is accessory or is a dwelling unit. He said that the Accessory Structure is a subordinate building that typically supports a home but could also support a business. These types of structures are generally garages, workshops, woodshed, etc., that are typically smaller than a primary structure like a dwelling, and typically detached. The County has regulated these Accessory Structures since the beginning of land use regulation in Multnomah County in the 1950's, and has not changed much since then. The first major amendment occurred in 2007, which added a list of common structures for context. A review threshold of 2,500 cumulative square feet was added for Accessory Structures and a covenant requirement was established anytime a bathroom or kitchen was proposed requiring that a note was recorded on the deed stating that the structure could not be used as a dwelling. So if a proposed Accessory Structure is larger than 2,500 s.f., or in combination with all the other Accessory Structures on the property, they now need to go through a discretionary land use review to make sure it is customarily accessory or incidental to an allowed use on the property.

At that time, we were dealing with proposals for uncommonly large Accessory Structures; however we are seeing different issues emerge today, such as converting Accessory Structures into Accessory Dwelling Units (ADU's). These structures are typically smaller, detached structures, with all of the permanent provisions for living, such as kitchen and bathroom with a shower and sink, heating, wiring, etc. Short term rentals are becoming very common in the Portland Metropolitan area; and in fact are encouraged in the urban areas.

We are seeing a lot of interest in these types of structures for the rural areas, and on a daily basis, the planners have to tell people they are not allowed. According to state law, Accessory Structures cannot be used as residences in rural areas. One dwelling per property is allowed. Additionally, with the adoption of the Rural Reserves designation over a large portion of Multnomah County, the County is prohibited from increasing density in our zones.

The question before the Planning Commission is not whether ADU's should be allowed, but how to clarify our code so that people understand that ADU's and other type of residential structures are not allowed in the rural areas.

Barber goes on to share a PowerPoint presentation showing examples of types structures and the type of reviews required for each type. He then identifies the four objectives for this project: to clarify the internal features that are allowed over the counter as a Type One review; to clarify the features that are potentially allowed under a Type Two land use review which involves public comment and possible appeals by the neighbors; to clearly state that Accessory Structures are not allowed as temporary or permanent dwellings; and to provide some flexibility to allow small structures such as fences and retaining walls to be located in the set-backs.

We are also responding to community concern and have heard compliance issues with these unpermitted accessory structures are creating impacts on the community and affecting the rural character. The County is tasked with protecting the farm and forest economies and these structures have the potential to increase density and threaten these resources.

Barber then went through the proposed language in the staff report. He reviewed the definition section and drew out the definition of cooking facilities to provide clarity for applicants. The proposal also includes a condition of approval that expands the covenant concept that states any time a development permit associated with an accessory building is issued the owner must record a covenant that states that they are aware that the structure will not be used as a dwelling. This will help future owners know what is and is not allowed in the accessory structure. The provision also clarifies that mechanical structures such as air-conditioners are accessory structures and must meet the same site standards. He goes on to list criteria that would differentiate between type one and type two reviews.

Rules pertaining to fences located in the setback area or on the property line are clarified in this code amendment giving certainty to property owners. The code language states that fences less than six feet in height are not subject to the setback requirements. If it is over that height it must be set back far enough that if it should fall it will not fall into the right of way. Barber proposed an amendment to the language that adds "less than or equal to" six feet in height every time it is mentioned in the code. Language does exist for less than or greater than but not to a fence that is exactly six feet in height.

(25:32) Barber then introduced written testimony received by our office prior to the hearing:

H-1, Email from Multnomah County Planning Commissioner Christopher Foster stating he has no issues with the proposed amendments to the auxiliary building rewrite.

H-2, Correspondence from Steven McCoy, Friends of the Columbia River Gorge supporting the approach taken in the proposed amendments to Chapter 38 and do not have any suggested changes.

H-3, Testimony from Mark Greenfield supporting the proposed revisions.

H-4, Testimony Tim Murphy, Oregon Department of Land Conservation and Development supporting the County's efforts to limit dwellings in accessory Structures in the EFU and CFU zones.

H-5, Testimony from Joe McCray supporting the proposed amendments.

Chair Ingle asked if the Covenant requirement would apply to both review (discretionary and non-discretionary) processes. Barber indicated that that is the intent. Ingle then asked if the covenant would be required for any new construction. Barber stated that would be required any time a development permit is associated with an accessory structure. The current form would need to be updated.

Commissioner Kabeiseman asked for clarification that an accessory building is a type of accessory structure, but that a structure could go further to include a swimming pool or other structure other than a building? Barber stated that if a structure houses a use, if so, it is an accessory building.

(31:15) Kabeiseman went on to ask if that the requirement that an accessory structure may encroach up to forty percent into any required yard not contiguous to road without approved adjustment could be interpreted that a thirty foot setback over a one hundred foot frontage would be allowed because it only occupies ten percent of the yard. Barber stated that was not the intent and could see how that could be misunderstood; he was open to suggested language to clarify this requirement. Kabeiseman suggested staff consult with Counsel on the specific language.

Barber then explained that the forty percent is the threshold between an adjustment and a variance; the variance being very difficult to obtain.

Commissioner Kessinger asked if an art studio would be an allowed use. Barber stated that a true art studio would be allowed as long as it wasn't being used as a commercial facility and if it wasn't being used as a dwelling.

Public Testimony

Richard Crampton – 8217 SE 267th Avenue Gresham, OR 97080; declined to testify as staff addressed his concern very well.

Ava Chapman – 13816 NW Old Germantown Road; **H-6**, submitted seventeen pages of people who opposed the proposed amendments. Why not ADU's? She referenced farm help dwellings and says there is a precedent and feels there should be one set of rules for the entire county. Portland is promoting this and the County should as well. Neighbors feel that the notice was misleading.

Paula Sauvageau – 3355 NW Forest Lane Portland OR 97229; **H-7**, Spoke in favor of the proposed changes to Accessory Structures provisions. Referenced the CFU requirement that the accessory dwelling be located within 100 feet of the primary dwelling and asked that this requirement be added to the over counter approval. She also expressed support for the covenant requirement to educate potential buyers that an accessory structure is not to be used as a dwelling.

Mike McKeel – 4350 SE Oxbow Parkway Gresham OR 97080, **H-8, H-9, H-10, H-11, H-12, H-13 & H-14**, opposed the regulations due to his concern about the livability of the County and the ability of people who are in a way that need this type of housing. He has stayed in Accessory Dwellings all over the world and has never been in a situation where he has experienced the concern over noise and traffic. As a Gresham Design Commissioner he has approved uses that are not in the code but meet the intent of the code. He requests that these amendments not be approved tonight but review them further to create possibilities for affordable housing done well. He has never been bothered by these illegal units in rural areas.

Ernest Hayes – 600 NE Grand Avenue Portland OR 97232; **H-15**, presented testimony on behalf of Metro Councilor Shirley Craddick, District 1.

Cindy Reid – PO Box 83731 Portland OR 97283; stated that she supports this policy because the State has provided specifications for EFU and MUA lands that limit structures on those properties. The issues of density and esthetics could dramatically affect the character of these areas. She asks that staff include language to address tents and trailers which are showing up on Air B&B for rent. She felt that without heavy enforcement it may be profitable for land-owners to ignore the County's code.

Patricia Langdon – 12711 NW Old Germantown Road Portland OR 97231; states that she opposes this proposal not on content but because of the way it being handed out. She felt that the notice didn't give any reason why this was being proposed or what the purpose was. What other solutions were proposed? She has concerns that the County may be restricting her ability to have an art studio. What were the proposals for enforcement of the existing rules? She felt that this was not a transparent process and what problem this is trying to solve.

Senator Laurie Monnes Anderson – 350 NW Wallula Gresham OR 97080; she request that the Commission delay this decision while the State addresses the housing crisis throughout the state. She suggested that the County staff speak with DLCD to see if they are proposing changes to State Law.

Commissioner Silodor clarified that we are only discussing the rural areas; she asked Senator Monnes Anderson is she was suggesting that when people become displaced that we should move them to the rural areas? She points out that there are already exceptions in the code for health hardship dwellings.

Gresham Councilor David Widmark – 515 NW Wallala Avenue Gresham OR 97080; he shared his concern about those people who become displaced as a result of enforcement in the rural area and can't afford to move into the city.

Mark Tesauro – 15245 NW Cornelius Pass Road Portland OR 97231; welcomes the idea of clarifying the code. Had there been a covenant when he purchased his property he would not be involved in cleaning up a Notice of Violation on his property. He feels that the proposed language will make the code more restrictive.

Mark Greenfield – 14745 NW Gillihan Road Portland OR 97231; he supports this amendment as clear and concise. He feels that they are needed given the number of accessory dwelling units that have sprung up on Sauvie Island. He suggested changes to language on page four of eighteen, "prior to issuance of any development permit involving an accessory building, the property owner shall record a covenant with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling...or for any other form of permanent or temporary residential use."

George Sowder – 17817 NW Skyline Blvd Portland OR 97231; complimented staff on their efforts to clarify the existing code and supports this proposal.

Stephanie Nystrom 211 NE 365th Avenue Corbett OR 97019; encouraged the Commission to adopt the proposal before them with the previously mentioned modifications. She wanted to

clarify that one area of the County that does allow Accessory Dwelling Units is Springdale. During the Comprehensive Plan update they held several community meeting in the area and asked if residents would like to see these uses in their neighborhoods and they unanimously stated that they did not.

John Eccles – 17727 NW Sauvie Island Road Portland OR 97231; supports the document and expressed the need to protect the rural character of Sauvie Island and Forest Park. Additional dwelling units will put a stress on existing services.

Carol Chesarek – 13300 NW Germantown Road Portland OR 97231; fully supports the staff's position and feels that ADU's are a wonderful option in the urban areas but not allowed in the rural areas. Please consider defining when a recreation vehicle or tents become an accessory structure. She would be willing to partner with the County to host an information event for the Forest Park neighborhood.

Linden Burk – 260 SE Pounder Road Corbett OR 97019; she has learned a lot tonight and is in favor of the effort to clarify the issue. There are numerous ADU's in the Corbett area and they present a risk for the community. She feels we need to put an end to plausible deniability; realtors are not touting the fact ADU's are possible, or that properties have them. Very supportive of the covenant process, she depends on State laws to protect her ability to continue farming. Farming infrastructure is lacking in the local community.

Donis McArdle – 17405 NW Skyline Blvd Portland OR 97231; she wanted to remind the Commission that the West Hills was once zoned Multiple Use Farm and Forest prior to it being changed to Commercial Forest Use. Many barns were built during this time without permits as an allowed use. Today there is a restriction of a combined 2500 square feet for accessory structures. That is not logical to store equipment and feels that it is unreasonable. Barber pointed out that agricultural buildings are not subject by this limitation on accessory structures.

Shannon Smith – 13315 NW Old Germantown Road Portland OR 97231; ADU prohibition is already not allowed in the rural area so confused as to why all the discussion. Her concern is more to the rights of the property owner. Would a pool house with shower and toilet be allowed; would a wood working shop with a toilet and a sink be allowed? What about putting beds for children's sleep-over in her barn that isn't being used for agricultural use? Please consider adding flexibility for multi-use accessory structures for the primary resident.

Commissioner Kabiesman asked if we did nothing would all applications have to be processed under a type two process.

Planning Director Cerbone stated that the intent of this proposal is to provide an applicant with a clear understanding what they can and can't do. Some uses were changed to a Type one process to make it easier for property owners to get a quick approval for these non-discretionary uses.

Craig Eroh – 15315 NW Rock Creek Road Portland OR 97231; would like have more time to review this proposal. Where does the 2500 sq ft rule come from? The rule of locating a building within 100 ft could be unpleasant if the building contained animals.

Sancy Leachman – 15315 NW Rock Creek Road Portland OR 97231; Compliance issues suggest that more discourse is necessary. She has concern that the purpose for this action is unclear and

that the community was not polled. She expressed concern for unintended consequences and that burden will fall on those not represented in the decision making process.

Vail Fletcher – 14765 NW Gillihan Road Portland OR 97231; She lives on five acres of MUA land and operates a small farm. In 2014 the farm made \$5600, in 2015 it made \$13,762, this year it made \$18,642. She has an ADU which makes \$30,000 which has been the only way that they have been able to sustain the farming practice.

John Christensen – 39825 Gordon Creek Road Corbett OR 97019; supports these clarifications. He feels that they provide a fast track for those who comply with the regulations. He went on to acknowledge the work that staff did in getting information out to the communities during the Comprehensive Plan Update over the past two years. He feels that this is a clarification of existing code and does not add any additional restrictions on property owners.

Robin Smith – 386 N Tomahawk Island Drive Portland OR 97217; has a friend who feels that over the years his rights have been eroded by regulations. He would like to build a small house with an ADU to give a student or someone in need a hand up and provide for his retirement income. She would urge the Planning Commission to delay the adoption of these changes until after this legislative session to see if changes are made to State law.

Euliu Quan Mishima – 840 NW Sixth Street Gresham OR 97030; owner of a small farm. Boring used to be wonderful place for farming but that culture is changing. She is concerned about restrictions on farm help dwellings.

Jamison Cavallaro – 2614 SE 67th Avenue Portland OR 97206; he would like to see provisions in the Type two process for a forester to have a sink, toilet and a means to heat up food for an employee.

Chair Ingle closed the public testimony portion of the hearing to allow for questions from the Commissioners. He proposed keeping the record open for written testimony until October 24th and deliberation on November 7th.

Commissioner Kabiesman **moved** and Commissioner Silodor seconds; **motions passed** unanimously.

Commissioner Kabiesman asked staff to address the issue of a RV being a structure. Barber states that the code treats someone living in a RV the same as someone living in an accessory structure, which is not allowed.

Commissioner Kabiesman went on to ask about an ADU in an existing structure. Barber explained that the code allows for one dwelling unit with one kitchen. Two kitchens would then function as a duplex which are not allowed under current zoning. There are exemptions in the code for farm worker housing and temporary health hardship housing.

Commissioner Silodor asked about living in or renting out tents. Barber stated that tent becomes a land use matter when it is rented out as in the case of a campground. Some zones do allow a campground as a conditional use and others do not.

Commissioner Silodor went on to ask what happens when a house has a non-permitted ADU inside the house. Barber stated that if a seller represented the dwelling as duplex he would caution the buyer of the potential problem associated with the unpermitted use. He felt that the covenant would help to prevent this misrepresentation in the future.

Commissioner Wood asked what in State law and County regulations prohibit ADU's. Barber explained that at the State level there are regulations in place for farm and forest lands that are very prescriptive about instances where you can have a second dwelling. They are for help for the farm with income requirements in the Exclusive Farm Use zone. In exception zones such as Rural Residential and Multiple Use Agriculture 20, State law limits density to one dwelling per lot of record. At the regional level the County is also prohibited from enacting any legislation that increases density in the rural areas with the adoption of the Urban and Rural Reserves.

Commissioner Denney asked if staff were aware of any State legislation addressing ADU's. Barber stated that he was unaware of any legislation specific to ADU's but it could come up in the context of housing which will most likely come before the Legislature in 2017. Cerbone interjected that affordable housing will be focused on the urban areas and not likely to change regulation in the rural areas. There is a proposal to make adding lands into an urban growth boundary more streamlined if those lands are for affordable housing.

Chair Ingle reviewed the proposed amendments to the staff report and asked that staff add some historical context to the introduction so that people know why we are looking at this, perhaps a timeline of the legislative history.

VII. Director's Comments:

Meeting adjourned at 8:56 p.m.

The next Planning Commission meeting is scheduled for November 7, 2016.

Recording Secretary,

Stuart Farmer