

12-145

BOOK 31 PAGE 1475
MINUTES OF MEETING OF PLANNING
AND ZONING COMMISSION HELD AT
10:30 A.M., JUNE 21, 1971

Pursuant to Notice given as provided by law, the Planning and Zoning Commission met in the Office of the County Commissioners at 10:30 a.m., on June 21, 1971, to hear the petition of residents of Missoula County Planning and Zoning District No. 12 requesting amendment of the language of Zoning District No. 12 to (1) clearly exclude house trailers and mobile homes; (2) delete the exception for Lot 31 of Cobban and Dinsmores Orchard Homes No. 3; and (3) set 1,000 square feet as the minimum space for single family dwellings.

Zoning Commission members present at the hearing were Commissioners Fetscher, Stoutenburg and Ostergren, and Elmer Frame, County Surveyor; Member Fred R. Barclay, County Assessor being absent from the City. Residents of Zoning District #12 for the petition were represented by Robert Sparks, petition instigator, James Ellen, Stewart Price and Fred Zimpel. Mrs. John Bauer, owner concerned with the exception mentioned in item #2 of the petition, was represented by Attorney Karl Karlberg and family members Mary Ann Bauer Fife and husband Dick Fife. Attorney Lee Jordan represented client Charles Walker, and Deputy County Attorney Ken Tolliver was present in an advisory capacity to the Commission. Other residents present were Fred Brauer and Harriett, his wife, Betty Jacobson and Bonnie R. Hamilton.

Chairman Fetscher announced that the petition passed by 60.5%, but that the withdrawal of 13 names brought it down to 55.6% and it was felt that this failed the petition as of the time of this announcement. Jim Ellen stated he felt the receipt of the withdrawals at this late hour would render them null and void and it was not proper or legal to cancel out all of their efforts to date. He set forth arguments to the effect that their many appearances here left no doubt as to the people's wish to have and maintain a residential atmosphere and this hearing is to solidify things that should have been done back in 1959 when they originally zoned the area.

Chairman Fetscher announced no hearing could be held until it was established whether the withdrawals failed the petition. Ken Tolliver was requested to make this determination during the next 5 minutes, during which Attorney Lee Jordan stated he was not sure that the petition failed as to the withdrawals but it was not legal or proper for other reasons which he later brought out as being improper by reason of allowing contract purchaser's signatures when the law states "freeholders" (this being upheld in cited court case) and the fact that only one vote per resident property could be counted, all of these being fatal defects.

Fred Brauer enlarged on the extent of change the area has undergone since 1959, now largely commercial on Reserve Street and South Avenue and soon to be a by-pass truck route. He also felt the petition was not made clear that the one to be hurt would not be Mr. Walker but Mrs. Bauer.

Ken Tolliver then announced that he saw no reason why they could

not go ahead with the hearing. Karl Karlberg presented Mrs. Bauer's case, emphasizing that if the exception mentioned in item #2 is deleted, his client would suffer direct financial loss and he moved the Commission that those requests for removal of their names be mentioned on the minutes as protests to item #2 of the petition, and the the exception be retained. The only change that could be made is to recognize that Reserve Street is now mainly commercial. He emphasized that the petitioners here today do not reside in the Reserve Street area but are located some distance from Mrs. Bauer's property. Mrs. Jacobson and Mrs. Hamilton brought out the extreme undesirability of maintaining the residential classification on Reserve Street, and Mrs. Brauer emphasized the need for some intelligent planning to cure a hodge-podge situation. Mr. and Mrs. Fife also stressed the hardship and loss this deletion of item #2 would cause Mrs. Bauer, and after 12 years of hard work someone could come in with a petition and take it away. There is no definite commitment yet whether the property would be used for mobile homes, and they couldn't say yet what it would be sold for.

Mr. Sparks admitted that item #2 had been included by the erroneous supposition on their part that the Bauers no longer cared about the exception.

After further discussion of the commercial nature of Reserve Street and the earnest desire of resident petitioners to maintain the residential value of their property, motion was made by Commissioner Stoutenburg "that we take this under consideration for further study." Motion seconded by Commissioner Ostergren, with the three Commissioners voting "Aye" and County Surveyor Frame voting "Nay" for the reason he felt he was ready for a decision at this time. It was tentatively arranged for a 9:30 meeting Thursday to make their decision. Mr. Tolliver was requested to research the legal questions brought out at the hearing.

CONTINUATION MEETING HELD AT
9:30 A.M., JUNE 24, 1971

The Planning and Zoning Commission met in the Office of the County Commissioners, with all members present. After due consideration by the Zoning Commission, motion was made by Commissioner Stoutenburg, seconded by County Surveyor Elmer Frame and carried unanimously, "that we recess the meeting on Zoning District No. 12 for further study at a future date."

CONTINUATION MEETING HELD AT
9:30 A.M., JUNE 25, 1971

The Planning and Zoning Commission again met in the office of the County Commissioners for a decision on the amendments requested for Zoning District No. 12. After further consideration, Commissioner Stoutenburg made a motion, seconded by Commissioner Ostergren and carried unanimously, "that we deny request No. 2 of the petition for amending zoning regulations in Zoning District No. 12, that we agree to act favorably on requests No. 1 and 3 by turning them over to the

County Attorney's Office to be rewritten in usable form."

CONTINUATION MEETING HELD AT
10:20 A.M., JULY 15, 1971

The Zoning Commission again met in the office of the County Commissioners with all members present.

Following review of the proposed amendments as rewritten by Deputy County Attorney Kenneth D. Tolliver, motion was made by Commissioner Ostergren, seconded by County Assessor Fred Barclay and carried unanimously "that we approve these amendments as rewritten, with the exception of changing "shall" to "may" in the last paragraph, and that they be incorporated in the following resolution of amendment to the language of Missoula County Planning and Zoning District No. 12;

"BE IT RESOLVED, that whereas a petition was filed with the Board of County Commissioners of Missoula County, Montana, on May 13, 1971, requesting that the language of Zoning District No. 12 be amended so as to:

1. Clearly exclude house trailers and mobile homes.
2. Delete the exception for Lot #1 of Cobban and Dinsmores Orchard Homes No. 3.
3. Set 1,000 square feet as the minimum space for single family dwellings.

WHEREAS, the County Commissioners thereupon appointed a Planning and Zoning Commission in accordance with the provision of Chapter 41, Title 16, as amended, and

WHEREAS, the Zoning Commission thereafter, by order, directed that notice of a public hearing be given as required by law, and such notice was thereafter given and a public hearing held,

NOW, THEREFORE, IT IS ORDERED AND THIS DOES ORDER, that Section I of Missoula County Planning and Zoning District No. 12 be amended to read as follows:

SECTION I: No building, structure or premises shall be used and no building or structure shall be erected, structurally altered, or maintained except as other-wise provided in this ordinance, except for one or more of the following uses, and, except as herein specifically provided, it shall be unlawful to use any of the lands within the boundaries of Missoula County Planning and Zoning District No. 12, or any structures or buildings located thereon for any commercial or industrial use, except that Lot Sixteen (16) and Lot One (1) of Cobban and Dinsmores Orchard Homes No. 3, which is included in said Zoning District No. 12, there be allowed thereon the nonconforming use of an approved Federal Housing Administration (FHA) Moter and/or Trailer Court.

The uses which are specifically permitted in addition to the

foregoing nonconforming use for Lots One (1) and Sixteen (16) of Cobban and Dinsmores Orchard Homes No. 3 are:

One family dwelling
Two family dwelling
Churches
Temples
Libraries
Schools
Colleges
Parks
Playgrounds
Public Fire Station
Telephone Exchange

Accessory Buildings incidental to the above use, provided they do not involve the conduct of any business, industrial or commercial enterprise.

Any agricultural, horticultural or stock-raising enterprise.

Any building presently located within the boundaries of the zoning district may be maintained and lawful use presently being made of the land may be continued whether in conformity with the zoning requests or not, provided, however, that for any nonconforming use, if the same is discontinued for a period of two years any future use thereafter will be in conformity with the zoning ordinance.

The growing and harvesting of timber is expressly permitted, but it shall be unlawful to conduct or operate any sawmill planing mill or other establishment for the processing of timber or the manufacture of wood products within the zoning district.

That the size of the lots which may be utilized for home dwelling purposes shall be not less than twelve thousand square feet.

That in new construction or the enlargement of any present structures shall not extend within twenty (20) feet of the front property line and that there shall be a side clearance of at least seven and one-half (7½) feet to the property line.

That structures used for one family dwelling shall contain at least 1,000 square feet of living space excluding the area of basements, garages, and outbuildings.

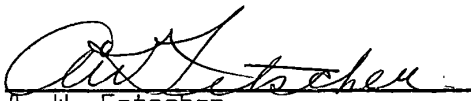
That structures used for two family dwelling shall contain at least 800 square feet of living space per family excluding the area of basement, garages and outbuildings.

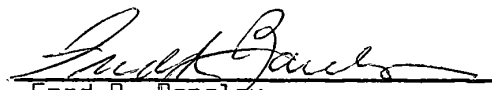
That structures which are composed in whole or part of finished living units capable of being moved on or off real property by affixing wheels to said units are prohibited.

12-18

BOOK 31 PAGE 1479

That the foregoing paragraph shall be considered to prohibit "house trailers", "mobile homes", and other related housing units, provided that any person desiring to place such a unit upon real property within the district may be granted permission to do so by the County Commissioners upon a showing that said structure provides its occupants light, air, and housing facilities comparable to those provided by other types of housing units and upon a showing that such unit does not detract from the proper development of the district with respect to property values, sanitary conditions, and neighborhood development. With respect to neighborhood development it must be shown that the housing unit in question is permanently affixed to the real property.


A. W. Fetscher
Chairman, Zoning Commission


Fred R. Barclay
Secretary, Zoning Commission

305698

I received and filed this Instrument for	
record on the	21 day of July
19 71	at 9:30 o'clock A.M., and it
is recorded in vol.	31 of
Traders	Records of the County of
Missoula, State of Montana, on page	1475
Witness my hand:	
Veronae R. Crouse, County Recorder	
By	Anthony L. Neale, Deputy
Fee \$	None Paid
Return to	Zoning Journal "A"
Address	