

**Planning Commission
Minutes
June 12, 2012**

The City of Sherwood Planning Commission met for their regular scheduled meeting on June 12, 2012 at 7:00 p.m. at 2201 East Kiehl Avenue, Sherwood, Arkansas.

Members Present

Lucien Gillham – Chairman
Scott Miller
Mike Berg
Forrest Penny

Members Absent

Albert Harris

Staff Present

Ellen Norvell – City Engineer
Dwight Pattison – City Planner
Steve Cobb – City Attorney
Ashley Taylor - Secretary

Chairman Gillham called the meeting to order.

Commissioner Penny made a motion to approve the minutes of the April 24, 2012 special called meeting. Commissioner Berg seconded the motion. The roll call vote was unanimous to approve the minutes.

Commissioner Penny made a motion to approve the minutes of the May 8, 2012 meeting. Commissioner Berg seconded the motion. The roll call vote was unanimous to approve minutes.

A Final Plat for Lot 5R1 and Lot 5R2 Silver Creek. Marlar Engineering Company, Agent. Mike Marlar was present to discuss the request. Staff Comments: City Engineer, Ellen Norvell said Engineering comments have been addressed. She said Engineering Staff recommends for approval. City Planner, Dwight Pattison said all of his comments have been addressed and he recommends for approval. Commissioner Penny made a motion to approve the Final Plat for Lot 5R1 and Lot 5R2 Silver

Creek. Commissioner Miller seconded the motion. The roll call vote was unanimous to approve the final plat.

A Final Plat for Lot 1 Manaugh Woods Addition. Marlar Engineering Company, Agent. Mike Marlar was present to discuss the request. Staff Comments: City Engineer, Ellen Norvell said Engineering Staff comments have been addressed and would recommend for approval. City Planner, Dwight Pattison said his comment was addressed and Planning Staff recommends for approval. Commissioner Berg made a motion to approve the Final Plat for Lot 1 Manaugh Woods Addition. Commissioner Penny seconded the motion. The roll call vote was unanimous to approve the final plat.

A Final Plat for Lot 2A and Lot 2B Meadow Springs Addition. Thomas Engineering Company, Agent. John Pownall was present to discuss the request. Staff Comments: City Engineer, Ellen Norvell said Engineering Staff recommends for approval. She said it meets the minimum standards. She said they do need to be aware that the sewer service needs to be installed for the newly created lot and it will be their responsibility to do that. City Planner, Dwight Pattison said Planning Staff recommends for approval. Commissioner Penny made a motion to approve the Final Plat for Lot 2A and Lot 2B Meadow Springs Addition. Commissioner Miller seconded the motion. The roll call vote was unanimous to approve the Final Plat.

A Site Plan for Buffalo Wild Wings located in the 4400 Block of Silver Creek Drive. Phillip Lewis Engineering, Inc., Agent. Phillip Lewis was present to discuss the request. Staff Comments: City Engineer, Ellen Norvell said she did not get a re-submittal from her comments and there are several things that have not been addressed. City Planner, Dwight Pattison said he had six comments and hasn't seen any revisions also. City Engineer Norvell said they have been in contact but have not received any re-submittals. Mr. Lewis brought revised plans to the meeting. City Engineer Norvell said they have not had a chance to review them. There was no public comment. Commissioner Berg made a motion to table the Site Plan until the July 10th meeting. Commissioner Penny seconded the motion. The roll call vote was unanimous to table the Site Plan.

A discussion to amend Ordinance No. 729 regulating accessory buildings. Chairman Gillham said they discussed the amendment in great detail last month. He asked Andy Wilson, Building Code Inspector for any

comments. Andy said he didn't really have anything to add to the previous discussions other than to say that he believes this topic that was introduced in March of this year and discussed in April and May and being discussed now has merited enough support to send it to the City Council for a vote. Chairman Gillham said this is a revision to the accessory building ordinance and it bases the maximum size of an accessory building to the size of the lot. He said the larger the lot the larger the accessory building can be. He said the largest it can be is 1,750 sq. ft. and that is on a lot of 4 acres or more. Chairman Gillham asked the City Engineer, Ellen Norvell for her comments. City Engineer Norvell said she really doesn't have any comments. She said this came about for two reasons. She said one reason was because we seem to be reviewing several requests for accessory structures that are larger than our standards would allow and as we were looking at it there was a different issue that came up on how staff in the past has been looking at a garage. She said a garage is also an accessory structure so we did incorporate both of that into the changes. She said one change is how we look at an accessory use such as a garage to a principle structure and increasing it to 35% of the sq. ft. of the house because the current 25% is limiting some people from being able to have a 3-car garage on their house. She said the other change is for the accessory structure that is a stand-alone structure. She said that was based on the size of the lot but they do have to meet all of the other setback requirements also. City Planner, Dwight Pattison said we needed to be careful about the amount of accessory uses on a piece of property because the primary use is single family residential. He said with a large garage and a large storage building it can become that the prominent use of the property is for storage. He said that could change the intent of the development of the neighborhood, which is primarily residential. He said we needed to remember to consider that. Chairman Gillham said regardless of the size no more than 30% of the lot can be covered in structures. He said on a lot of one acre or less the largest the building can be is 750 sq. ft., which would be 25' x 30' and still cannot cover more than 30% of the lot. City Planner Pattison said in addition, if you have a three car garage then that is considered an accessory use as well. Andy Wilson said a typical example is if someone had a home and had a three car attached garage and then built a 750 sq. ft. accessory building then you would have an accessory use of about 1,500 sq. ft. all together. He said most three car garages are about 750 sq. ft. as well. He said other than a few exceptions; most houses built today are in excess of 1,500 sq. ft. so he doesn't think that an accessory use being the predominant use of the property is an issue.

Becki Vassar of 5 Putter Cove said most of what is being proposed is fine but she her main concern is what she considers Old Sherwood, which is the historic part of Sherwood. She said the houses there are about 1,000 sq. ft. and with a minimum amount of 750 sq. ft. that is more than half the size of some of the little houses over there. She said you would be creating this monstrous storage facility on those long deep lots. She said she has looked in Park Hill and they are not there and Maumelle doesn't allow them. She said nobody liked that because once they are there then they are there. She said she is concerned about the size and the obtrusive appearance of these structures with those little houses. She said she understands that these people need places to store things, but they're not there now and all of a sudden they will start mushrooming and you are going to have these great big things. She said also if they are not properly observed these large storage facilities have turned into working hobby garages and the like. She said that is something that has to be considered when you are looking at these large storage buildings as well. She said most of the proposed ordinance she doesn't have a problem with but it is that 750 sq. ft. on those little bitty lots that have those little bitty houses that she is so concerned about. She said it could affect other property values in the city. She said if people starting looking at Sherwood in that area and think 'look at all of those awful building they have allowed them to put on those lots' it could affect other properties in other neighborhoods in Sherwood. She said she thinks it is something that we need to think about very seriously.

Tom Brooks of 1616 Coolhurst said he agrees somewhat with Ms. Vassar in that he doesn't see the ordinance as being necessary. He said it would have an extremely negative affect on real estate when trying to sell lots over there with buildings as big as the houses in Old Sherwood. He said he heard a reference made that we are getting all of these requests for variances. He said he went through some old records and that is simply not true. He said he didn't spend a lot of time on this but he could only find one case in the last year where there was a request for that. He said when he served on the Council in the 90's and they did this kind of thing before Sherwood began modernizing and got the Board of Adjustment. He said he doesn't recall a whole lot of requests for variances being requested but some they granted and some they didn't. He said if you do it by prescription, which is what this ordinance would do there is a lot of bad that can come from that. He said once it is done by prescription then you are going to have to say that you 'screwed up' and change it. He said then you couldn't do anything about what you allowed and then try and make them tear it down. He said

he would hope that the Commission do nothing on this and leave well enough alone. He said it hasn't become a major issue. He said records don't show that many items for this has shown up on the agendas. He said hopefully you will leave things the way it is.

Chairman Gillham said he thinks we could satisfy both of their comments. He said a long deep lot of 400' is more than a football field long and 70' wide is a wide lot. He said most of those long lots in Old Sherwood are probably more like 60' wide by 300' long. He said a lot 70' x 400' is 28,000 sq. ft., which is less than one acre that is 43,560 sq. ft. He said we could change paragraph A of the proposed ordinance to allow the existing 25% of the square footage of the house for an accessory.

Mr. Brooks said his position is that there is no urgent need to have to pass a law just to take care of something. He said just leave well enough alone because it hasn't become an issue.

City Engineer Norvell addressed Mr. Brooks by saying part of the reason it hasn't become an issue on the part of the attached garages is because the way the ordinance reads, which for some reason it interpreted differently by staff in the past. She said the way the ordinance reads is "an accessory use" which is an attached garage "can only be 25% of the square foot of the principle use". She said if you have a 2,000 sq. ft. house your garage could only be 500 sq. ft. She said at the very least that portion needs to be revised.

Mr. Brooks responded to City Engineer Norvell by saying he doesn't know enough about that and that she may have a valid point but he thinks you could deal with that alone rather than try to pass along an ordinance that amends stuff and does a whole lot of bad things. He said her point might be well taken. He said she would be quite knowledgeable of this because it is in direct contact with her office. He said this ordinance that is being proposed is not good.

Doris Anderson of 2507 Bearskin Drive said that in regards to City Engineer Norvell's point about the garage attached to the house being an accessory use, you could simply change the definition to read that an accessory building shall be one thing and a garage shall be considered the primary structure. She said that is simple. She said keep it simple and everyone can understand it with no problem. She said she lives in an area where they have covenants and restrictions and a lot of people don't know that they have

covenants and restrictions until something comes about and a neighbor complains and so they call her and ask what to do. She said sometimes it's a little too far gone and the neighbor has already built this structure that is two-stories tall out behind their pool and they have already done some things that damaged the neighbor's property. She said those things come about but when that particular instance happened they went ahead and let him build that two-story pool building and just told him not to put a floor up there. She said now the lady that lives behind him is deceased so the other neighbor's are left to deal with that. She said things happen and there is always going to be an exception to every rule but the rules should apply to most people. She said the simple thing to do would be to change the description for a garage to make it part of the primary structure. She said if we are going to do detached buildings they need to be in correlation with whatever buildings are already on the lot and they should be relevant to that. She said they shouldn't be back door garages or become manufacturing plants, welding plants or businesses that are run out of their back door of a home where there is traffic in and out that is going to impact the neighbors in a negative manor. She said to think about those things as well. She said if you are going to allow the larger accessory buildings she probably has a hundred neighbors in her neighborhood that want to fill their backyard with an accessory building and they would probably do it without asking for a permit. She said you might be creating more than you really want to. She said maybe you should take a step back and look at it and get some of the different neighborhood associations to come together and talk about this. She said she doesn't think a lot of the neighborhood people have been aware that you have been having these meetings. She said she has not been aware due to other occupations and other things going on in her life that has kept her away. She said she would be more that happy to call some other people to come up with a good solution. She said she wishes the Commission would table it and give them another opportunity to look at it.

Michael Clayton of 4 Putter Cove said he wanted to ask about the interpretation on the accessory use and considering the attached garages as an accessory use and if that is the way they are seeing it.

Chairman Gillham said that is not how he sees it.

City Engineer Norvell responded to Mr. Clayton by saying we did not originally interpreted by staff that way. She said when they started looking at accessory uses they made a call to Metroplan at the request of one of the

Commissioners. She said Metroplan is the one that prepared this document and when you actually go back and read it she doesn't know how it could be interpreted any other way. She said you are looking at uses and the garage is not the principle structure. She said the primary use is a living place and the garage is to store things so that is two separate uses. She said once that got brought to their attention then they felt as staff they needed to enforce it the way it was in the ordinance or change the ordinance.

Mr. Clayton said he has two suggestions related to that. He said one is if the staff has an interpretation issue with the way the ordinance is read then a presentation can be made to the Planning Commission for a literal interpretation of what it means. He said if it says one thing and it is crystal clear that is one thing but if it is ambiguous then the Planning Commission can make a policy statement saying this is what we believe it is intended to be. He said he remembers years ago that there was never a discussion to include existing garages that are a part of the principle structure as part of the 25% square footage. He said if you do that then you might as well get in to closets, porches and other uses of the house that are not living quarters. He said it gets really hard and bogged down when you get to interpreting that.

Chairman Gillham told Mr. Clayton that he agrees with him. He said he has a 1,380 sq. ft. house and he has a 400 sq. ft. garage on it so his garage is 29% of his house so he can't have a 3' x 3' storage building. He said he has been on the this board about 15 years and they have never considered an attached garage as some kind of accessory buildings.

City Engineer Norvell said the ordinance specifically says, "An accessory building attached to the principle building shall be made structurally a part of". She said she doesn't know what else that would be. She said it needs to be clear because now that it has been brought to our attention that that was the intent when it was drafted then it doesn't need to be left up to staff interpretation because obviously there were different ways that different staff members in the past has interpreted it. She said it needed to be clear where it is understood by all.

Mr. Clayton said he agrees with the City Engineer but the Planning Commission can make an interpretation if they feel that it is just an interpretation issue. He said if you don't believe it is an interpretation issue and it is clear on what the intent was then he recommends getting that

sentence or that paragraph amended by ordinance to the City Council. He said one thing he does have a concern with is where you have a steel or metal lean-to leaned up against the house, which does not go with the harmony of the neighborhood. He said he would like to see that prohibited by these proposed regulations. He said he has a real issue with that and thinks it would be more appropriate if it was behind the building but to attach it and make it apart of the house does disturb the harmony of the neighborhood. He said back when Ordinance #729 was created there was never any discussions regarding the attached garages and the principle structure. He said they wanted proportionality of accessory structures depending on the size of the neighborhood. He said that is where the 25% square footage rule came in was to keep proportionality there. He said there is a rational behind it and you can't just arbitrarily pick a number and say this sounds good and go with it. He said you should have a rational behind it of why you picked that number.

Richard Magee from Metroplan said he actually wrote the regulations to begin with in the 1970's and revised it in the 1980's and he wanted to give some history on why it got written the way it did and the basis for it. He said one of the things that they did when they first created the zoning ordinance for Sherwood was look at what was there in place on the ground at the time that the ordinance was being created. He said at that time Sherwood was very small. He said you looked at it in terms of the square footage of the existing houses and the existing accessory buildings and with that in mind that is the way it was written the way it was because in most of the older part of Sherwood there were no garages attached to the houses. He said in some cases there were in the newer part but for the most part they didn't exist. He said it was to provide for when someone wanted to come in and put a garage either attached to their building or detached that it would limit the square footage of that building to a proportional amount to compare it with the existing structure and with the lot. He said changing the issue of how you apply this across the board within every zoning district doesn't mean you can't change it. He said he hasn't seen the latest revision of the proposed ordinance but his concern is not that you change it or tweak it but it is the issue of proportional and the impact in terms of neighborhoods. He said if you apply it across the board in a city that is one thing but zoning is supposed to be applied by district and is supposed to be uniform within the district not within the city as a whole but in the zoning district. He said it needs to be applicable to a specific zone and that is his problem with it. He said another thing is in terms of it is one thing to look at a request for a

waiver or variance in terms of an issue its another thing to yet provide a prescriptive allowable by right and allow it within every lot. He said looking at the long term implications of what you are doing he thinks they should take the older part of Sherwood or the part of Sherwood where you are getting some requests for this issue and then plot out an accessory building to the same size that you are going to allow and put it on every lot and look at it and see what it does. He said it changes the character of a neighborhood. He said he is not saying that is right or wrong he is just saying in terms of it is not just a lot issue it is a citywide application. He said you can sketch up on Google a 3-D version very quickly or Metroplan can do it in 3-D so they can see the implications of what they are doing for a particular subdivision or the city as a whole. He said those are some of his concerns. He said it is not the tweaking but the application of that in the long term. He said he thought they might want to understand why that definition of accessory building and accessory use was written the way it was.

Commissioner Berg asked Mr. Magee if this would be something that we could zone to districts in the Comprehensive Land Use Plan. Mr. Magee said yes. Commissioner Berg asked if they could address it in the public meetings. Mr. Magee said they could craft whatever they want. He said they could create a new district to allow this in a certain area.

Chairman Gillham said the way the proposed ordinance is written it automatically creates districts by allowing a 1,000 sq. ft. accessory building on a lot that is more than 1 acre and less than 2 acres. Mr. Magee said it is not district specific. Chairman Gillham said South of Gravel Ridge there are hardly any lots that are more than an acre.

Mr. Magee said under state law you have to have uniformity within a district. He said what you make available to a person in a zone can't be lot specific it has to be zone specific. He said that is the problem he has with it being strictly to a size lot because it is not applicable to everybody in that zone. He said it is an equal protection issue. He said the fact that it is not zone specific is the problem with the concept.

Commissioner Berg said the people in Old Sherwood could have the input into what they want and if they want what we have they can do that or they can make it smaller.

City Engineer Norvell said most of the request come from Old Sherwood. She said contrary to what some people are saying there have been several requests last year and that is what has brought all of this up. She said where she is having a problem is that people are applying for a variance to have a larger storage building where there is no hardship created by the lot as far as a legal definition. She said some residents are being told no you can't have a building that big because of the regulations and they say okay and walk away then the next person comes in and says there has got to be some way to get around it so they push until they find out they can get a variance and they go get a variance. She said that doesn't seem fair to her either. She said it became apparent that maybe this 25% isn't big enough because in the last 30 to 40 years things have changed and people have changed. She said if you do drive down to Old Sherwood you would find that there are several 2-car garages behind those houses now. She said she thinks from what we have seen that was allowed to happen at some point.

Mr. Mage addressed City Engineer Norvell and said that what she is describing to him is not a problem with the regulations but a problem with the application of the regulations.

City Engineer Norvell said it may be but it is not a problem at staff level.

Mr. Magee said he isn't saying it is a problem at staff level he is just saying that it is a problem of administration of the regulation as opposed to the regulation.

City Engineer Norvell said Council hasn't even had a chance to look at the proposed ordinance so we don't know what their thoughts are. She said in the 70's when this started there were no garages and in the 80's we made some changes and now because of the way it was interpreted we have houses out there that are 2,000 square feet with attached garages. She asked if that meets the intent of the existing ordinance.

Mr. Magee said no.

City Engineer Norvell said we need to make some changes.

Mr. Magee said he doesn't disagree.

City Engineer Norvell said we are going on and on and what are those changes. She said there is going to come a point when we are going to have to start telling people that are bringing in these plans with 3-car garages that they will have to get a variance because we can no longer issue a permit. She said that is not the answer to issue a bunch of variances.

Mr. Magee said the issue with a variance is that unless there is a hardship then the variance is not applicable in this case. He said if they can meet the requirements of the ordinance then there is no justification for a variance.

City Engineer Norvell said she agrees.

Mr. Magee said it is not an economic hardship and has nothing to do with the lot when they can meet the regulations so it is the application of the regulations and the administration of this that is the problem. He said having said that it doesn't mean that there doesn't need to be changes. He said the debate here is the appropriate measure to do that.

City Engineer Norvell said it may not be and that is why we have had 3 months of public hearings and we haven't gotten anywhere past 'we don't like it so let's table it or move on'. She said it needs to be worked out and probably in a workshop situation would have been better but once again we thought we had come to something with staff and with the Planning Commission and evidently there are some people that doesn't think that is the way to go and maybe it's not but now that we know the intent of this ordinance then either staff needs a direction to ignore that ordinance and let's just make our own decisions and that is not good or we need to make changes and it can't drag on another 6 months. She said it needs to be resolved or either we are going to have to go back to meeting the ordinance.

Mr. Magee said there are other ways to deal with that. He said there are other cities that issue a moratorium on a specific issue to give the city time address that issue. He said the city could declare a moratorium on this issue for a period of time.

City Engineer Norvell asked Mr. Magee if that would affect 3-car garages on 2,000 square foot houses. She said she could just see us trying to put a moratorium on building houses.

Mr. Magee said it would be on a request for variances. He said you could issue a moratorium and give the city time to address the issue. He said he is just saying that to look at the long-term implications, he doesn't think you will achieve what you are trying to achieve.

Commissioner Berg asked City Engineer Norvell if she stated that we are having issues with homebuilders when they bring in their plans for a permit.

City Engineer Norvell said we have continued operating as it was interpreted for years in the past. She said we have cases all over town that do not meet the existing ordinance. She said when they sat down to write that ordinance in the 1970's they looked at what was in the city and they patterned the ordinance after that. She said if we look at what is in the city right now then the existing ordinance doesn't even match what we are continuing to allow to be built and it needs to be cleaned up one way or the other.

Commissioner Berg said he agrees.

City Engineer Norvell said if we need to take the 750 square foot for a detached accessory building section out of the proposed ordinance and look at what percentage we want to use for accessory structures then maybe that is what we should do. She said she doesn't know what the answer is but it seems that we keep beating this and we are not getting anywhere.

Chairman Gillham said he thinks they should re-write the proposed ordinance allow the 2,000 square foot house with the attached 3-car garage to where the 3-car garage is not an accessory building but part of the principle structure.

City Engineer Norvell said to her from a planning standpoint that there are still uses.

Chairman Gillham said they want write it to destroy uses. He said they are going to have a principle structure where you can have a house and a garage there together like 90% of the houses in Sherwood are and that has a square footage. He said then in paragraph A of the proposed ordinance where it allows a 750 square foot accessory building on a lot of less than 1 acre should be re-written to go back with the old rule of 25% of the square footage of the principle structure and that will take care of Old Sherwood.

Commissioner Berg addressed Attorney Steve Cobb and asked him if he had read the proposed ordinance. Attorney Cobb said he read it and what Chairman Gillham is saying is what they need to do. He said it doesn't need to be a package. He said you have a definitional issue, which needs to be an ordinance, and then the accessory building issue needs to be a different one. He said you have two components in it that are significant. He said he thinks everyone agrees that accessory should include a garage so that is the paramount fix. He said then we can come back and address the issue of the accessory buildings but he thinks the Commission should take what Mr. Magee had to say to heart because he thinks he is correct that if we do it across the board it is not going to be a fair application and it will be a problem.

Commissioner Berg asked if they could have a workshop with the City Planner, City Engineer and City Attorney who does draft ordinances and help us get to the place where we won't have to have this debate every meeting.

Chairman Gillham asked Commissioner Berg if he would like to be on that committee.

Commissioner Berg said he would be the chairman of the workshop committee.

Commissioner Penny asked if North Little Rock would have an ordinance that they could look at that would comply with what Mr. Magee is saying.

Mr. Magee said not necessarily because they are written individually for cities so it may not be transferable and neither should it be.

Commissioner Penny asked if Metroplan dictates to us or do we dictate to ourselves.

Attorney Cobb said they do not dictate they only suggest.

Commissioner Penny said let's move ahead.

Commissioner Berg asked Mr. Magee to attend the workshop.

Mr. Magee said he would.

Commissioner Berg made a motion to have a workshop concerning the consideration of two ordinances. One, which would address the definitional issue regarding garages as an accessory building and another to discuss limitations for modifications to the existing accessory building ordinance in its present form. Commissioner Miller seconded the motion. The roll call vote was unanimous to have a workshop.

Old Business – A discussion to amend the Schedule of Uses to allow elevated tanks in all zones. City Engineer Norvell said last month the Planning Commission made a recommendation to the Council for a C-3 Conditional Zone for an elevated water tank off of Highway 107 near the Little Rock Air Force Base. She said this becomes another area of depending on where you look in the Schedule of Uses you get different answers. She said it has elevated pressure tanks; municipal water supply can be a conditional use in C-3, C-4 and Industrial only. She said there is another area where it talks about public utilities where they are used for surrounding areas. She said when it went before the Council they wanted to do a reduced zoning so they left it in the residential zoning and gave them a conditional use for an elevated tank. She said she would just like to make it clear that an elevated tank can be used as a conditional use in all zones. City Planner Pattison said the R-1 does allow it as a conditional use when you turn to the R-1 section but he does think it is a good idea to have it as a conditional use. City Engineer Norvell said it is common to have it in a residential zone to serve your residents with water. She said we just want to be consistent. Commissioner Berg made a motion to allow elevated pressure tanks in all zone classes as a conditional use. Commissioner Penny seconded the motion. The roll call vote was unanimous to amend the Schedule of Uses.

There being no further business, Commissioner Berg made a motion to adjourn. Commissioner Penny seconded the motion. The roll call vote was unanimous to adjourn.

ATTEST:

Ashley Taylor, Secretary

Lucien Gillham, Chairman