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NEVADA COUNTY PLANNING COMMISSION
NEVADA COUNTY, CALIFORNIA

MINUTES of the meeting of July 13, 2017, 1:30 PM, Board Chambers, Eric Rood Administration Center, 950 Maidu Avenue, Nevada City, California

MEMBERS PRESENT: Chair Aguilar and Commissioners Heck, Duncan and James.

MEMBERS ABSENT: Commissioner Jensen.

STAFF PRESENT: Planning Director, Brian Foss; Principal Planner, Tyler Barrington; Senior Planner, Patrick Dobbs; Deputy County Counsel, Rhetta VanderPloeg; Administrative Assistant, Tine Mathiasen.

PUBLIC HEARINGS:

1. Accessory Dwelling Unit/Supportive/Transitional Housing Ordinance
PLN17-0026; ORD17-1 Page 1, Line 48

STANDING ORDERS: Salute to the Flag - Roll Call - Corrections to Agenda.

CALL MEETING TO ORDER: The meeting was called to order at 1:30 p.m. Roll call was taken.

CHANGES TO AGENDA: None.

PUBLIC COMMENT: Members of the public shall be allowed to address the Commission on items not appearing on the agenda which are of interest to the public and are within the subject matter jurisdiction of the Planning Commission, provided that no action shall be taken unless otherwise authorized by Subdivision (6) of Section 54954.2 of the Government Code.

Chair Aguilar opened public comment at 1:32 p.m.

Francis Jorgensen introduced herself as the co-chair of the Coalition of Fire Safe Communities. She discussed the goals of the organization and said they are looking forward to working with the Commission

Chair Aguilar closed public comment at 1:34 p.m.

COMMISSION BUSINESS: None.

CONSENT ITEMS: None.

PUBLIC HEARING:

PLN17-0026; ORD17-1. A public hearing to consider a recommendation to the Board of Supervisors to adopt an Ordinance (ORD17-1) for zoning text amendments to the Nevada County

50 Land Use and Development Code Chapter II, to bring the Code into compliance with State housing
51 laws for accessory dwelling units (ADUs), and transitional and supportive housing, including
52 amendments to Allowable Land Uses Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D and 2.6.F for
53 consistent ADU terminology, and to provide for a variety of affordable housing types and equal
54 opportunities in all residential areas including the establishment of transitional housing for the
55 homeless; and Sections L-II 3.19 (Second Dwelling Units), L-II 3.19.1 (Accessory-Second
56 Dwelling Units), L-II 3.19.2 (Second Dwelling Units-Consistent with Allowed Density), L-II 4.2.5
57 (Building Setbacks), L-II 4.2.9 (Parking), and L-II 6.1 (Definitions) for ADU development
58 standards and administration, internal Code consistency, and transitional and supportive housing
59 definitions. **RECOMMENDED ENVIRONMENTAL DETERMINATION:** CEQA Statutory
60 Exemption 15061(b)(3), 15268, and 15282(h). **PLANNER:** Patrick Dobbs, Senior Planner

61
62 Planner Dobbs introduced himself and the proposed zoning text amendments. He began with a
63 background on ADUs, the benefits and challenges associated with them, and the various laws
64 regulating them. He then detailed three types of ADUs. He described the changes to Nevada
65 County's code that are required by SB 1069.

66
67 Chair Aguilar asked about ADUs on legal non-conforming lots.

68
69 Planner Dobbs said legal non-conforming lots would be eligible to construct ADUs. He then
70 detailed AB 2299 and its requirements. He explained SB 2 and the Housing Element, which
71 address transitional and supportive housing. Public comment on the project was received in the
72 form of emails, phone calls and formal letters. Most comments were in support of the proposal.
73 Some public comment asked the county to go further in providing incentives to building ADUs,
74 namely by removing the owner occupancy requirement. One comment requested that ADUs have
75 restrictions against being used for short term rentals. One comment was opposed to the proposal
76 because of concern about a decrease in neighboring property value. Planner Dobbs asked the
77 Commission to recommend the Board of Supervisors find the project exempt from CEQA and
78 approve the proposed zoning text amendments.

79
80 Chair Aguilar asked the Commission for questions.

81
82 Commissioner Duncan asked if an income restriction on ADUs was part of the proposed changes.

83
84 Planner Dobbs answered that it is not part of the proposal.

85
86 Commissioner Duncan asked if it was a consideration.

87
88 Planner Dobbs said staff had listened to and considered the received feedback and have met some
89 of those requests.

90
91 Commissioner Duncan discussed previous restrictions on ADUs. This proposal allows more
92 leniency. Income limitations may help provide more affordable housing.

93
94 Planner Dobbs said that could be included in the Commission's recommendation to the Board.

95
96 Commissioner Duncan asked what Planner Dobbs meant when he said he listened to the feedback.

97

98 Planner Dobbs said there are a number of ways to make housing more affordable. The proposal
99 simplifies the process by reducing barriers. Staff's intent is to be compliant with the state. Staff
100 will respond to any further direction from the Board.

101
102 Commissioner Duncan asked if Planner Dobbs was suggesting that folks concerned about
103 affordability come before the Board.

104
105 Planner Dobbs said he was suggesting that for that to be considered, staff would want to get the
106 direction from the Board.

107
108 Commissioner Duncan said the proposal was to comply with state law and the county is doing
109 catch-up. She asked if this was tied to eligibility for grant funds.

110
111 Planner Dobbs said he was not aware of specific connections. HHSa manages many housing
112 assistance programs like Section 8. This proposal does not affect existing grants. It does offer more
113 opportunities and possibilities.

114
115 Commissioner Duncan asked about septic requirements for detached ADUs.

116
117 Planner Dobbs explained the requirements and the reasoning behind them. A second unit requires
118 a second septic tank, though sometimes both units may share a leach field. This prevents a single
119 system from being overloaded. Gravity systems in particular sometimes aren't well maintained so
120 having non-dependent systems helps with the longevity and functionality of the septic system.

121
122 Commissioner Duncan commented on Environmental Health's discretion.

123
124 Planner Dobbs noted Environmental Health's built-in protections.

125
126 Commissioner Duncan contrasted the by-right allowance of transitional and supportive housing in
127 commercial zoning to the requirement that a use permit be issued for traditional housing in the
128 same zoning. It is not equal opportunity if traditional housing is being held to a higher standard.

129
130 Planner Dobbs explained that these changes make it easier to provide transitional and supportive
131 housing.

132
133 Commissioner Duncan asked for clarification on permitting requirements for traditional housing
134 in mixed-use developments.

135
136 Planner Dobbs said that residential is not intended to be the primary use in Community
137 Commercial zoning.

138
139 Commissioner Duncan said that puts an onerous burden developers providing traditional housing.

140
141 Planner Dobbs clarified that that was the existing regulation. Commercially zoned properties often
142 have the most intense uses so there are a lot of use permits required in those zoning districts.

143
144 Commissioner Duncan suggested making mixed-use projects and urban redevelopment more
145 sustainable. She suggested making the process of proposing housing as a part of that development
146 less of a burden.

147
148 Planner Dobbs thanked Commissioner Duncan.
149
150 Commissioner Duncan commented that it was not equal opportunity.
151
152 Commissioner Heck asked for a discussion of costs. She mentioned public comment and asked
153 what incentives the county is providing to encourage ADUs.
154
155 Planner Dobbs said costs vary quite a bit. Some impact fees are already reduced and the county
156 does not control many user fees. Incentives include streamlined review, some reduced fees and
157 quick turnaround time for plan review and permit issuance. The fees charged are for services
158 provided and they are consistent with other counties. There are generous allowances for ADUs.
159
160 Commissioner Heck asked what fees would be for a hypothetical project.
161
162 Director Foss said the fees are established by the Building Department and he does not have a
163 ballpark. There has been some fee analysis in the past.
164
165 Commissioner Heck noted that fees are an impediment for ADU development. She asked if
166 thought has been given to structures like liens, bonds and other creative ways to stretch fees out.
167
168 Chair Aguilar said a fee discussion was not within the Commission's purview.
169
170 Commissioner Heck said the Commission is making a recommendation for the policy. She wanted
171 to have a discussion on a way to address the fees to address public comment. Fees can be an
172 impediment and the goal is to incentivize.
173
174 Chair Aguilar said there is no way for the Commission to talk about it. The Board talks about the
175 fees and the Commission talks about the planning.
176
177 Commissioner Duncan said Commissioner Heck was addressing the affordability of building. Fees
178 support a wide variety of services and are an expensive reality. Perhaps there are other avenues
179 staff could look at to recommend to the Board. She gave examples of programs to rehab and build
180 houses and discussed state and federal grants. However, fees must be paid upfront as deferred
181 payments are difficult.
182
183 Chair Aguilar asked if making the language in conformance with the state was contingent on fees.
184
185 Commissioner Heck said no.
186
187 Commissioner Duncan said no. She wanted to address Commissioner Heck's comment and discuss
188 whether there may be more the Commission could do. Staff hears comments and the community
189 has suggestions to make housing more affordable, which is what the Board would like.
190
191 Chair Aguilar said the Board pursuing grant money is one thing but suggesting they place
192 restrictions on homeowners is not a discussion he wants to have. It is not agendaized and it would
193 be crossing the line.
194

195 Commissioner Heck said she wanted to bring up but maybe the proper place for the discussion
196 would be with the Board.
197
198 Chair Aguilar said the proper place for the discussion is when it has been agendized.
199
200 Planner Barrington said the county does seek state and federal grant funding to provide transitional
201 and affordable housing. He gave the examples of a USDA grant for the preservation of housing
202 and rehabilitation as well as a grant to provide assistance in renting and purchasing homes.
203
204 Commissioner Heck asked for the reasoning behind the owner occupancy restriction.
205
206 Planner Dobbs discussed accountability. When the owner is present, there is a higher likelihood a
207 property will be maintained and in compliance. The 2002 rules reflect the notion that when
208 homeowners are present, there is less likelihood of conflicts and incompatibilities.
209
210 Chair Aguilar asked about converting a structure that meets setbacks that were legal at the time
211 but are not up to current standards.
212
213 Planner Dobbs said that properties would not be allowed to become more non-conforming.
214 Conversions are allowed under existing rules. There are paths to permitting ADUs.
215
216 Chair Aguilar opened public comment at 2:09 p.m.
217
218 Jan Fleming asked for clarification. She wondered if second dwellings and granny units are now
219 ADUs.
220
221 Chair Aguilar started to answer and Ms. Fleming noted that there were big differences on the
222 restrictions.
223
224 Chair Aguilar asked Ms. Fleming for her concern or comment.
225
226 Ms. Fleming asked if the new rules make ADUs the only secondary dwelling.
227
228 Chair Aguilar asked if she had further questions.
229
230 Ms. Fleming asked if the units were allowed kitchens.
231
232 Chair Aguilar said they are allowed kitchens. Everything is being changed to ADUs.
233
234 Planner Barrington suggested that Ms. Fleming might be referring to guest houses. Those cannot
235 have kitchens and are different than ADUs. Guest house are still allowed, as are second dwelling
236 units consistent with density. There are provisions for the three types of units.
237
238 Ms. Fleming asked the Commission to think about property owners. ADU size limitations make
239 them affordable and she does not want a limit on rent that could be charged.
240
241 Alan Phillips discussed septic tank requirements. He gave examples and noted that requiring
242 second septic tanks for ADUs is prohibitively expensive as well as inconsistent.
243

244 Francis Jorgensen asked about fire safety requirements and defensible space when ADUs are close
245 to other properties.

246

247 Greg Zaller noted he had submitted multiple written comments regarding the owner occupation
248 requirement. The way the regulations stand, ADUs are not effectively addressing the housing
249 crisis. He wants to build many ADUs and make them very affordable. He discussed his process
250 with the Building Department and the ways the regulations may be circumvented. The owner
251 occupancy regulation is discriminatory and in violation of Senate Bill 2. He proposed eliminating
252 the owner occupancy requirement.

253

254 Heather Featherston discussed the housing shortage in the county. The owner occupancy
255 requirement means that investors with rental properties cannot add additional housing. Investors
256 will have accountability as they want to maintain their investments, so the requirement does not
257 make sense.

258

259 Pauli Halstead said she is in total agreement with others that the owner occupation restriction
260 should be removed. She suggested that ADUs should not be used as Airbnbs or short term rentals,
261 but rather as housing.

262

263 Ronda Trujillo appreciates the effort to make adding an ADU work, but thinks the proposed
264 changes are not enough. More can be done, such as providing help with fees. As wonderful as it
265 sounds, the changes can still get better which would make the proposal work better for the county.

266

267 Gary Mapa is a real estate broker in Placer County. He is very aware of the housing shortage
268 problem in California. It is essential that investors get the opportunity to have ADUs. Investors
269 have skin in the game as well. It doesn't matter who rents out an ADU, there is the same risk either
270 way. Financing is critical in order to build an ADU and is often difficult for homeowners to get it
271 on their own. The opportunity should be equal. He suggested ways to create financing, including
272 bond money.

273

274 Barbara Bashall of the NCCA said she is pleased to see changes. She encouraged the Commission
275 to stay away from income restrictions, as restrictions deter building these units. She also suggested
276 the Commission consider removing some restrictions around the second septic tank requirement
277 as well as the owner occupancy requirement. The Building Department should be encouraged to
278 look at reducing the costs of ADUs.

279

280 Mardie Caldwell discussed tiny houses and asked that they be part of the discussion. She also
281 asked that property owners be allowed to have more than one ADU on their property.

282

283 Chair Aguilar closed public comment at 2:28 p.m. and asked staff to address the issues.

284

285 Planner Dobbs first addressed the second septic tank requirement. The redundancy improves septic
286 system functionality and longevity at the residential level and has not proved to be a barrier to
287 applicants. He discussed defensible space, fire requirements and language in the Public Resources
288 Code. The owner occupancy requirement was important at time it was implemented and it still has
289 validity in its effort to reduce absentee landlords. Short term rentals are not regulated, though they
290 are required to register with the Tax Collector. County departments and staff answer to the Board
291 on fees. Departments have reduced fees where they can and staff is not pursuing or recommending
292 further reduction in fees or service. Tiny homes need to meet the California Building Code but

293 many that are registered with the DMV do not meet energy calculation and snow load
294 requirements. The county permits projects that are consistent with the Building Code.
295
296 Director Foss said the state, not local code, generally sets septic requirements. The proposed
297 ordinance does not change permitting requirements for tiny homes, which are dictated by the
298 Building Code. The ordinance does not seek to incorporate or exclude tiny homes. He asked
299 County Counsel to speak to the legality of the owner occupation requirement.
300
301 Counsel VanderPloeg read the government code that allows local jurisdictions to allow owner
302 occupancy requirements. Local jurisdictions are allowed to retain the authority on the provision.
303
304 Director Foss said the scope of the project was to come into compliance with state law, not to
305 reevaluate and reconsider the accessory dwelling unit ordinance. Staff will take any additional
306 direction from the Board.
307
308 Chair Aguilar asked about bedrooms and septic requirements.
309
310 Director Foss said he doesn't know the exact codes. Because it is a dwelling it needs to comply
311 with dwelling unit standards. There is a differentiation from adding bedrooms to an existing house
312 but he does not know the specifics.
313
314 Chair Aguilar asked if there were more questions.
315
316 Commissioner Duncan asked if second dwelling units are separate from accessory dwelling units.
317
318 Director Foss agreed, the second dwelling unit consistent with density is still a term in the code.
319
320 Commissioner Duncan said county standards still had to be met. She asked if there is a requirement
321 that the primary residence be owner occupied when a second unit [consistent with density] is
322 proposed.
323
324 Director Foss said he doesn't believe there is.
325
326 Commissioner Duncan cautioned to not make assumptions on who might occupy the ADU. People
327 are willing to pay the rents and without income restrictions they can be rented to anyone. The
328 owner occupancy requirement seems onerous and discriminatory. She wondered if the law was
329 being applied fairly. This was an opportunity for the Commission to consider how to make it better.
330 Staff can bring the Board's attention to the fact that the discussion came up and that the community
331 is concerned. She liked the idea of coupling it with financing to make ADUs affordable, then tie
332 those units to income restrictions. Helping people involves providing affordable housing. The state
333 was right to take the lead in getting local jurisdictions to see the bigger picture of affordable
334 housing.
335
336 Chair Aguilar asked Commissioner Duncan what she was saying.
337
338 Commissioner Duncan suggested staff bring this up. Is the issue being treated fairly and are ADUs
339 being unnecessarily penalized? She doesn't think that is what the state intended. This is an
340 opportunity to look closer. She was confident that staff would take the comments under advisement
341 and share them with the Board.

342
343 Commissioner James said he agreed with staff that there should be an owner occupancy restriction
344 associated with ADUs. He has had experience in a number of cities and seen that the bulk of the
345 problem properties that require enforcement are usually rentals with absent owners that are hard
346 to contact and hold accountable. It is a good restriction. He agrees with the sentiments about fees.
347 He has had experience with loans being available for building fees, which could then be recorded
348 against a property in case there were problems. He is not in favor of income restrictions as they
349 would be counterproductive in making more housing.

350
351 Commissioner Heck said she felt very strongly that the owner occupancy restriction was not the
352 way to go. Area housing is very expensive, it is unfair to treat investors and individual homeowners
353 differently, and it is not correct to assume there will be problems if an owner isn't on site. Most
354 people take care of their properties and she feels very strongly about the restriction.

355
356 Counsel VanderPloeg clarified that the restriction is not being added; it has been there since 2002.
357 The restriction is not being addressed in the changes today.

358
359 Commissioner Heck asked if it was not possible for the Commission to address it.

360
361 Counsel VanderPloeg said it is not part of the packet and it is not a change being presented. It is
362 an existing condition.

363
364 Commissioner Heck said that it was definitely addressed in the packet as a condition for ADUs.
365 Therefore, it is in fact a part of what the Commission is being asked to approve.

366
367 Counsel VanderPloeg said it was part of it but not a change.

368
369 Planner Dobbs said it is existing language. He noted that staff hears the discussion and will capture
370 it in the Board staff report. He was not sure if it was within the purview of the Commission, though
371 it is part of the section that staff is asking the Commission to recommend to the Board.

372
373 Chair Aguilar said it is definitely within the purview.

374
375 Commissioner Heck agreed.

376
377 Chair Aguilar said the Commission will be making a recommendation. If the Commission doesn't
378 agree with it, they either table it and give staff direction, or they make a modification.

379
380 Counsel VanderPloeg clarified that the owner occupation requirement was an existing condition.

381
382 Commissioner Heck said she understands it is existing and she thinks it is within their purview to
383 recommend the change to the Board of Supervisors.

384
385 Chair Aguilar said the Commission can't set fees but they can do the change.

386
387 Commissioner Heck expressed agreement.

388
389 In response to a member of the public wanting to talk, Chair Aguilar noted that public comment
390 was closed.

391
392 Chair Aguilar gave examples of gray areas and loopholes in the occupation requirement. He
393 expressed dislike of a few restrictions, including potential income restrictions and the owner
394 occupancy requirement. He discussed the benefits of ADUs as well as doubt that a loosening of
395 restrictions will result in a flood of new ones. He then noted that the Commission was at a point to
396 make a motion to recommend the actions as written, recommend with a modification, or ask staff
397 to address other issues.

398
399 Commissioner Heck said she was prepared to make a motion.

400
401 **Motion by Commissioner Heck** to recommend the Board of Supervisors find the project is
402 statutorily exempt from the California Environmental Quality Act pursuant to Public Resource
403 Code 21080.17 and Sections 15061(b)(3), 15268, and 15282(h) of the California Environmental
404 Quality Act (CEQA) Guidelines; **second by Commissioner Duncan. Motion carried on a voice**
405 **vote 4/0 (Commissioner Jensen absent).**

406
407 **Motion by Commissioner Heck** to recommend the Board of Supervisors adopt the attached
408 Ordinance (ORD17-1) amending Chapter II of the Nevada County Land Use and Development
409 Code Allowable Land Uses Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.6.F; and Sections L-
410 II 3.19, 3.19.1, 3.19.2, 4.2.5, 4.2.9 and 6.1; with the additional recommendation that the Board of
411 Supervisors consider dropping the current restriction that accessory dwelling units can only be
412 occupied as long as there is an owner occupant on the property; Second by Commissioner
413 **Duncan. Motion carried on a voice vote 3/1 (Commissioner James voted no; Commissioner**
414 **Jensen was absent).**

415
416 Chair Aguilar noted that there was no ten-day appeal period.

417
418 Discussion ensued regarding upcoming Commission meetings.

419
420 **Motion by Commissioner Duncan; second by Commissioner Heck to adjourn. Motion**
421 **carried on voice vote 4/0 (Commissioner Jensen absent).**

422
423 There being no further business to come before the Commission, the meeting was adjourned at
424 2:54 p.m. to the next meeting tentatively scheduled for August 10, 2017, in the Board of
425 Supervisors Chambers, 950 Maidu Avenue, Nevada City.

426
427
428 Passed and accepted this 10th day of August, 2017.

429
430 Brian Foss (tm)
431 Brian Foss, Ex-Officio Secretary