CITY OF MONTCLAIR
PLANNING COMMISSION MINUTES

REGULAR ADJOURNED MEETING
Monday, August 9, 2010

COUNCIL CHAMBER
5111 Benito Street, Montclair, California 91763

CALL TO ORDER

Chairman Flores called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

Commissioner Johnson led those present in the salute to the flag.

ROLL CALL

Present: Chairman Flores, Vice Chairman Sahagun, Commissioners Johnson, Lenhert, and Vodvarka, Community Development Director Lustro, City Planner Diaz, Assistant Planner Gutierrez, and Deputy City Attorney Holdaway.

MINUTES

The minutes of the July 26, 2010 regular meeting were presented for approval. Commissioner Vodvarka moved, Chairman Flores seconded, there being no opposition to the motion, the minutes were approved 5-0.

ORAL AND WRITTEN COMMUNICATIONS

None.

AGENDA ITEMS

6.a PUBLIC HEARING - PROPOSED AMENDMENTS TO TITLE 11 OF THE MONTCLAIR MUNICIPAL CODE REGARDING ACCESSORY STRUCTURES IN SINGLE-FAMILY RESIDENTIAL ZONES

Project Address:	Citywide
Project Applicant:	City of Montclair
Project Planner:	Michael Diaz, City Planner

City Planner Diaz reviewed the staff report.

Staff has brought this item back to the Commission to consider the proposed code amendment for accessory structures. Ordinance Number 10-916 is intended to amend the sections related to accessory structures in the single-family residential zones. The item came about because two applicants who have large properties were hoping to build larger accessory structures on their properties that were, up to now, limited to the 400 square feet maximum that the code currently specifies. With this code amendment, the maximum size would be changed along with a number of other items that staff felt were important to go along with this particular code amendment to help clarify some issues. He knew it had been a while and the applicants were anxious to get this done. Nothing is easy, it takes a lot of work. He mentioned that at the June 14 Planning Commission meeting, staff took comments from the Commission and the applicants.. Since then staff has revised the proposed code amendment to address the issued that were raised. The document included in the packets is intended to put together what staff believes will be clear and easy to use in the future. If the Commission recommends approval then the item will be forwarded to the City Council for its review and hopefully approval. with or without further modifications. One of the concerns raised by Mr. Bateman, one of the applicants, on June 14 was with regard to the RV structures and the height of the buildings to enclose them. Staff took Mr. Bateman's comments and made modifications to our proposal that gave some flexibility. To address staff's concern regarding the size of these specific structures. design guidelines for RV garages were added which are found on pages 8 and 9 of the proposed ordinance. Some of the other changes made have to do with the size of the structures, including some simplifications like those on page 6 of the Ordinance as you will in Table 1, Section 11.19.050, regarding maximum sizes of accessory structures allowed. Staff did not make any other major changes, as originally proposed in the previous staff report. City Planner Diaz then offered to answer any questions and recommended that the Commission approve the proposed code amendment to send it to the City Council for final review. The applicants and their families were present as well.

Commissioner Johnson commented that staff did a very good job and she felt we were going in the right direction, but she felt there needed to be some clarification about accessory structures. Before she retired, she was a manager and always felt that you could not expect your staff to follow the rules if you did not know what they are and she felt that most people do not know what an accessory structure is. She did a very informal "man on the street" survey and asked a few people if they knew what an

accessory structure was and not one person could tell her what it was. Mostly, she got blank stares. The one person who came closest said that she thought since I used the words "accessory" and "structure" together, she thought it was a building for handicapped people. While she thought the intent was good and the way it was written was good, she really would like to see something that clarifies what an accessory structure is. So, going forward six months or a year from now, if someone wants to build a carport, they could find the rules. She would Google "carport." There again, she says "accessory structure" and again, that blank look. So, she would really like to see some clarification or a short paragraph at the beginning of it that says an accessory structure is and if someone used our City website, they should be able to Google whatever they are going to build and the accessory structure policy would pop up for them.

City Planner Diaz replied that on pages 2 and 3 of the Ordinance, there are new definitions that would be added and there is a definition for accessory structure in there. The second sentence of the definition attempts to identify a number of structures that would typically be considered an accessory structure, like a carport or freestanding patio which are detached from the main house. By contrast, a room addition would be considered part of the main house and not an accessory structure. He stated that is staff's hope that right after this Ordinance is adopted that we will provide something online that would be user friendly so people can ask a question and get a response. Director Lustro added that in addition to the definition that City Planner Diaz identified at the beginning of Section 11.02.010, staff tried to take it a couple steps further relating to what they are trying to cover with the Ordinance and, as Mr. Diaz stated, the first definition talks primarily about detached accessory structures. It states that in the first sentence of this definition and following that there is a definition of an attached accessory structure. Starting at the bottom of page 2 and continuing onto page 3, the difference between a minor and major accessory structure is defined. The lack of such a definition has been a problem for staff in the past. Staff has generally used the 120 square-foot threshold because that is the threshold for a building permit in the Building Code; however, there has never been anything in the zoning code that has actually defined where those structures could go. It has been a gray area and staff felt in pursuing this particular code amendment it would be the perfect opportunity to try to further define the difference between those structures and what our expectations are and where they can be located on the property.

Commissioner Vodvarka commented he did not see anything in the Ordinance that accessory structures were not living quarters. He asked what would stop someone from building an accessory building and later on turning it into some sort of living quarters when Grandma needs a place to stay. City Planner Diaz stated that in certain cases someone could create a second unit from an accessory structure on their property provided they can comply with the second unit ordinance which was approved about one year ago. Director Lustro added that if you review page 5 of the Ordinance, under Section 11.19.030 "General Requirements," Subsection G states that, "No accessory building shall be used as a dwelling unit, sleeping quarters, or a housekeeping unit, or contain a kitchen unless permitted within an approved Second Dwelling Unit, subject to the provisions of Chapter 11.23" as City Planner Diaz was describing.

Chairman Flores asked for clarification regarding building height. He stated under the old Ordinance the maximum height was 8 feet and under the new Ordinance, the maximum height would be 15 feet, but he wanted to clarify if that was the wall height or the roof. City Planner Diaz stated that he was not aware of a height limit of 8-feet for accessory structures, but stated that one of the reasons we are adding a 15 foot limit, because the code only refers to single-story with no indication as to what that height would be. Staff chose 15 feet because it seemed to be appropriate for the the majority of the houses in town and would gives us a standard to use as a guide.. Most homes in town have shallow-pitched roofs. Per existing code, a second story can be up to 35 feet in height, as measured from the adjacent ground to the top of the highest ridge point. Chairman Flores stated that for clarification purposes "wall" or "top of roof" should be spelled out because normally when you talk about a house, a house has 8-foot walls and then the pitch of the roof. If we just say 15 feet, they will have a 15 foot wall and, depending on the width, they could have a roof with a 4:12 or 5:12 pitch, adding another 7 or 8 feet. We should stress that 15 feet or whatever is the top of the roof. Director Lustro replied that although he did not have a copy handy, he believed that building height was defined in the zoning code already, but if building height is not clearly defined in the code presently, staff can modify the Ordinance before it goes to City Council if that is the pleasure of the Commission in order to clarify to what point building height needs to be measured. Chairman Flores felt it was a good idea. Commissioner Vodvarka asked if anyone checked to see what the height of a motor home is. If a motor home is 12 feet 6 inches, you would need a doorway that high. Then when you build a building like that, you have to take into consideration that you are putting a header in the top of that wall to accommodate a doorway for that building and that will give you a little bit more height. Director Lustro commented that is the reason staff added more criteria for RV garages, allowing up to an ultimate maximum height of 20 feet for the RV portion of the garage, as City Planner Diaz was describing earlier. Part of the design criteria in the Ordinance is if an RV garage is going to be constructed, then the height shall not exceed the minimum height necessary to be able to get the RV into the garage and also to implement design criteria that is compatible with the main house.

Chairman Flores opened the public hearing.

Tom Harich, 11377 Buckskin Avenue, Montclair, thanked the Commission and staff for working on their desires in getting this done and the only question he had was what kind of time frame are we looking at for approval of the Ordinance so he can break ground. Director Lustro replied that staff is required to set a public hearing before the City Council, so the plan is to request that Council formally set the hearing at its meeting on September 7, and then the hearing would actually take place at the Council meeting on Monday, September 20. That is the plan of action right and he did not see any reason why it cannot be met.

Ben Bateman, 11157 Shetland Avenue, Montclair, thanked the Commission and congratulated staff for their work on this. He had some issues that staff addressed and felt they worked hard and this was a plan that will set Montclair in a good position in the

future to allow quality construction to take place and let residents choose the best use for their property. The Chairman had a question on the height and that is addressed under Section 11.19.070.C, in that no accessory structure shall have wall height greater than 10 feet. That limits where you can be and the exception would be back to the RV structures that would then allow that to be taller to accommodate the RV. That works in with the 15-foot height limit that Chairman Flores was concerned about. He reviewed it and had issues but in reviewing the current Ordinance as it is written, he thinks it is good legislation that will be beneficial to the City and him. He appreciated staff's work and attention on this.

Vice Chairman Sahagun asked about the chart and whether it was set in stone or would there be any flexibility. City Planner Diaz replied that the intent is to lay out the parameters for the size of an accessory structure. With respect to the height, staff made allowances for the RV structure but there is always the possibility of someone seeking a variance, whether it's for height, size, or setback. The difficulty, and it's designed to be this way, with variances is that they are supposed to apply to those truly exceptional circumstances where a variance would be justified. It's hard to imagine how someone could justify something like a 1,800 square-foot accessory structure. In terms of the height of something, there might be some circumstances in which a height variance could be pursued. A variance requires a separate application, that separate findings be made, a fee, all of which are designed to discourage people from just seeking a change from what the code would prescribe. The Planning Commission would have to make all four required findings in order to grant a variance. Director Lustro added that, in looking at the table that Vice Chairman Sahagun is referring to on page 6, in the second column, it outlines the maximum total size that would be allowed for the corresponding lot sizes. Keep in mind that like any other construction on a property, while this may be the maximum total size, the proposal would need to meet all of the other zoning criteria for that particular lot. In other words, there are issues with meeting setbacks, lot coverage, and building separation. So, for example, using the second column in the table, a person comes in and they have a 9,000 square-foot lot and they want to build a 400 square-foot accessory structure. On its face, it looks like that would be okay, but if the existing improvements on the property are designed in such a way that they cannot accommodate 400 square feet, then they are going to be hard-pressed to be able to design something that would allow them to do that. Maybe they have to do something that is 300 square feet, because that is all their property will accommodate. Just because there is a stated maximum, it would not necessarily entitle someone with that size lot to build that size structure. So, there are other things that need to be looked at, just as staff would if they were doing a room addition or some other construction on their property.

Commissioner Lenhert asked if the new ordinance would apply to existing structures. Director Lustro stated that if there are legally permitted accessory structures on a property already, they are clearly allowed to remain. However, this ordinance in no way grandfathers in any construction that was done illegally without permits or City review. The one thing he pointed out was that if you have, say, a 15,000 square-foot lot with an existing, permitted accessory structure that is 400 square feet, pursuant to this proposed ordinance they would be allowed to build a second accessory structure up to

another 400 square feet if the property could accommodate it because the maximum allowed per this proposed ordinance would be 800 square feet cumulative, and it would also allow a maximum of two accessory structures on the property. If there are accessory structures that are unpermitted on a property, they are fair game for Code Enforcement action and a property owner would have a couple of options at that particular point in time; they could either remove the accessory structures, or if there is a desire to keep one or more, if they are allowed more than one, and they could possibly be made legal, that would require Planning and Building review, permits, etc.

Commissioner Lenhert asked if Tuff Sheds fall under this. Director Lustro replied that Tuff Shed makes all different kinds of structures. For example, they make a 2-car garage; that would clearly be a major accessory structure. He thought the type of Tuff Shed Commissioner Lenhert was referring to was a small shed to store garden tools, etc. and that would come under the criteria of the minor accessory structure that are less than 120 square feet and they would have to meet the criteria laid out in the Ordinance.

Commissioner Lenhert commented that he worked his way through the Ordinance at least three times and felt staff did a good job and felt it covers everything well.

Commissioner Vodvarka commented he has been looking through the Ordinance and as a former RV owner, if he were building something like this in his backyard, what he was thinking about was putting in a sewer system for hook-up to the RV and there are chemicals that some cities will not allow to go from an RV into the sewer system, although some of the new chemicals that they are using in the RV toilets now are supposed to be friendly to sewer systems. City Planner Diaz replied that staff has not addressed it directly with respect to RVs. Any accessory structures that have plumbing would have to be otherwise connected to the main sewer line serving the house. Staff will check with the Environmental Manager about this particular issue.

Hearing no other comments and no one else being present, Chairman Flores closed the public hearing.

Commissioner Lenhert recommended the City Council adopt proposed Ordinance No. 10-916 regarding accessory structures on single-family properties within the City to be incorporated into Title 11 of the Montclair Municipal Code (Zoning and Development) and modify and supersede the existing provisions pertaining to accessory structures contained therein, Commissioner Johnson seconded, there being no opposition to the motion, the motion passed 5-0.

Director Lustro clarified that staff will research the question regarding defining building height and will make sure that if it is not already in the current definitions right now regarding building height, it will be added to the Ordinance language before it goes to City Council.

6.b DISCUSSION REGARDING GRAFFITI ABATEMENT IN CONSTRUCTION AREAS

Director Lustro stated that this was an item discussed several times in the past and by request, it was added to this agenda for the Commission's consideration and informal discussion. Staff does not have a formal presentation regarding this and prefaced the Commission's discussion by saying this issue came up in the past during the Ramona Avenue grade separation project and, more specifically, toward the contractor's actions or more appropriately, lack of action regarding graffiti in the construction area and on traffic signs proximate to the construction area. The comments raised during past meetings surrounded how this can be better addressed during the Monte Vista Avenue grade separation project, which is still probably a couple of years off. So, we would simply be interested in hearing the Commission's comments. The assumption of the Commission in the past has been correct in that part of the contractor's responsibility in the construction is that they are responsible for abatement of graffiti during the course of construction. He did not have a copy of the contract and did not know how much detail it goes into, but during whatever discussion the Commission wants to have, if it has any recommendations or suggestions that it wants passed along to Public Works, staff would be happy to do that.

Commissioner Johnson commented that all projects that are done have a set of requirements and some of them are pretty standard and she wondered if that could be a standard condition for those projects that they need to abate the graffiti within a certain period of time.

Commissioner Johnson asked how broad the term "graffiti" is because there are other things that are a blight to the City, but you can't call it writing on the wall. An example she was thinking of was the shoes hanging on the power lines, is that graffiti, who do you call, who takes it down? Director Lustro stated the quick answer is depending upon whose wires the shoes are hanging on, which may not always be apparent to the casual passerby or the lay person. They would be either Southern California Edison, Verizon or Time Warner. It’s a little bit easier to distinguish Edison's distribution lines from Verizon or Time Warner. Verizon and Time Warner typically run their lines and cables down at the same level on utility poles and to the uninformed, it may be difficult to distinguish between the two. It's not something the City does, it's the responsibility of the utilities and they probably do not place a high priority on that. The City has had mixed reactions from Edison and Verizon, our two main utility carriers, with respect to addressing issues like that. If there is anything hanging on Edison distribution lines, residents should contact Edison on its hotline and let them know about it. Staff does not know how fast they will get out there. If similar problems occur on the lower lines on a utility pole, that is typically Verizon and/or Time Warner. He recommended calling Verizon to see if they would go out there and remove them.

Chairman Flores commented that it irritates him when he reports graffiti and it remains for months. The last time he tried to get one of those signs removed (during the Ramona Avenue project), it was left there until after the construction was done. He sees other cities taking care of this problem before it starts and it's done mainly by

having a pre-construction meeting with the construction company, the City Engineer, the surveying company, and usually that is the time to discuss graffiti abatement. If you state it that as soon as there is graffiti on your signs, the job will stop because that is the only thing that gets their attention, they will either get a penalty or so many days to remove it, etc. In Rancho Cucamonga and a couple other cities, the City inspector has to be the tough guy at the beginning of the job and has to attend the pre-construction meeting. We need to have the people who are going to do the construction sign something that acknowledges they are aware of what is expected of them. The first time the City inspector goes out there and sees graffiti, they better stop the job or it's going to be like what happened to us out on Ramona Avenue. It was a disgrace, the graffiti all over. He had to drive by it everyday for months and he reported it and nothing was done. It's just pride of the City to have it clean.

Commissioner Lenhert suggested that the contracts should specify they have to keep the graffiti cleaned up, just like any business located here, and as far as the shoes on the lines, that is a gang thing. Commissioner Johnson stated that she knew what it stood for but she did not know how to get them down. In one particular area there are shoes and then three feet away there is a noose. Commissioner Lenhert stated she should call Code Enforcement because they have a pole and when he was with Code Enforcement he took a lot of them down.

Chairman Flores commented that he was sure all cities have this problem, but when it takes a long time to get it taken care of, it was very irritating. He hoped it would change for the better and hoped he would be around for the Monte Vista Avenue project so he can keep the graffiti off the construction site.

INFORMATION ITEMS

Commissioner Lenhert reminded everyone to look around their property for green water where mosquitoes could breed. He got four notices of finding positive mosquitoes for the West Nile Virus and they are in this locality, on the edges. So, make sure everything is clean, no green standing water.

Vice Chairman Sahagun asked if there are any ordinances regarding solar panels and for the wind turbines as we are now trying to go green with the wind and sun generating panels. Director Lustro commented that solar panels have been regulated primarily by Building Code for years. In the past couple of years, we have reviewed just a handful of applications for solar panels on residential roofs. There is nothing in the Code with regard to wind turbines. He knows of several other cities that have dealt with that issue, but we have never had any requests for one. Vice Chairman Sahagun commented that he knew they were making them smaller for residential use as it is a different way to generate electricity. City Planner Diaz stated that we have not had any inquiries because it's not as windy as Rancho or parts of Upland, which is the one other place he heard of where someone was willing to pursue it. Some of these technologies, while they are green and maybe good for the environment, are still very expensive. The average homeowner cannot touch that unless they intend to live in the property until

they die and have a long time to pay it off. Occasionally, we will get a request for residential solar panels; we've had two in the last two years.

Commissioner Johnson commented that she tried to go solar about one year ago but failed to find a company that would do the work. She saw a truck advertising that it was in Montclair with a phone number, but she could not find the location and thought the business is actually mobile with the truck. She gave up when she learned that you cannot use the solar panels to power your home, you use them to get credit from the electric company that lowers your bill.

Chairman Flores saw a survey crew at the vacant lot at the northeast corner of Moreno and Monte Vista. Director Lustro replied the developer, Merlone Geier, is continuing to move forward on finalizing their plans for submittal to the Building Division so it is very possible their crews or development team were out there surveying.

Chairman Flores adjourned the meeting at 7:58 p.m.

Respectfully submitted,

Laura Berke
Recording Secretary