



Olivette City Council **WORKSESSION**

February 9, 2021

7:00 PM

Meeting Via Zoom

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Join by Phone: 301 715 8592 or 312 626 6799

1. Roll Call

2. Discussion Of Urban Agriculture - Horticulture

The Council will continue discussion of the draft zoning amendments concerning "Urban Agriculture". It is anticipated the Council will focus on the topic of horticulture. All information can be found on the City website <HTTPS://WWW.OLIVETTEMO.COM/607/URBAN-AGRICULTURE>

3. Discussion Of Proposed Accessory Use Zoning Changes

City Attorney Paul Martin will discuss proposed zoning changes to accessory structures section of the zoning ordinances. This proposal is related to legal concerns identify by Mr. Martin in administrative approval of certain permits.

Documents:

[02-09-21 ACC.USE.CHANGES.PDF](#)

[02-09-21 ACCESSORY.USE.PCDC.MEMO.PDF](#)

4. Adjournment

AGENDA ITEMS WILL NOT NECESSARILY BE DISCUSSED IN ORDER. IF YOU HAVE ANY QUESTIONS, PLEASE CALL CITY HALL AT (314) 993-0444

Individuals wishing to speak at the meeting may do so via Zoom. Persons will be called upon to speak during Hearing from Citizens and during Public Hearings. Persons may speak or utilize the Q&A functions of Zoom. Join the Meeting via Zoom by clicking [here](#)
To join via phone: 301 715 8592 or 312 626 6799

Persons may also submit a written statement to Communications Manager Kiana Fleming at KFleming@OlivetteMo.com by 5pm the day of the meeting.

Please note that the City Council may adjourn to closed session pursuant to the Revised Statutes of the State of Missouri to discuss legal, confidential or privileged attorney-client matters pursuant to Section 610.021(1), real estate matters pursuant to Section 610.021(2), personnel matters pursuant to 610.021(3), audit matters pursuant to Section 610.021(17), or for any other reason allowed by Missouri law.

Posted this day, February 5 2021

Barbara Sondag, City Manager

Sec. 400.1592 Permitted Accessory Structures in Residentially-Zoned Districts

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B. Residential. Accessory structures in a residentially zoned district are limited to the following:

* * * * *

12. *Basketball goals and poles.*

- a. *Number: One (1) per lot.*
- b. *Height: Not to exceed fourteen (14) feet, inclusive of backboard.*
- c. *Location: Behind the front, side, and rear yard setbacks.*

13. *Flagpoles.*

- a. *Number: One (1) per lot.*
- b. *Height: Not to exceed fourteen (14) feet.*
- c. *Location: Behind the front, side, and rear yard setbacks.*

C. *Variations.*

- 1. *Additional accessory structures not enumerated or ~~accessory structures in excess of the noted height or area permitted under this Section~~ are in Section 400.1592.B shall be subject to Site Plan Review in accordance with Article XI and Community Design Review in accordance with Chapter 425.*
- 2. *Notwithstanding anything herein to the contrary, the Zoning Administrator shall have the authority to vary the specifications prescribed for any use enumerated in Section 400.1592.B, whether by reducing or adding to said specifications, to balance and protect neighboring and community interests. Any person aggrieved by the exercise of such discretion may appeal to the Planning and Community Design Commission for Site Plan Review in accordance with Article XI and Community Design Review in accordance with Chapter 425.*

ARTICLE XI SITE PLAN REVIEW

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Section 400.1090 Review Procedure.

- A. Site plan review procedures for proposed uses in the "SR" District which do not require rezoning, but are subject to site plan review and design review as required by Article I, Chapter 425 of the Olivette Municipal Code. An application for site plan review, together with the information and plans specified in Section 400.1080, shall be submitted to the Planning and Zoning Administrator at least thirty (30) days prior to a regularly scheduled meeting of the Commission.
1. Site plan data shall be provided in accordance with the requirements of Section 400.1080, provided that same shall include only those items necessary to address the proposed action as specified by the Planning and Zoning Administrator. The application shall be accompanied by a number of copies as may be required by the Administrator.
 2. ~~The Planning and Zoning Administrator shall review the application to determine its compliance with applicable law and shall approve, approve with conditions or deny the application. Conditions placed on an approved application shall be resolved to the satisfaction of the Planning and Zoning Administrator prior to issuance of a building permit. The Administrator shall state in writing any reason for denial.~~
 3. ~~Any person aggrieved by the approval or denial of an application by the Planning and Zoning Administrator may request review from the Board of Adjustment, either by alleging error by the Administrator or by seeking a variance, as provided in Article XVII hereof.~~
 2. *The Commission shall review the application to determine the environmental impact of such proposed building or use upon the character of the neighborhood, traffic conditions, public utility facilities and other matters pertaining to the general health, safety and welfare of the City of Olivette, including each of the factors set forth in Section 400.1050 hereof.*
 3. *The Commission, within sixty (60) days after submission to it, shall vote to approve or disapprove the application. Conditions may be placed on the approval as deemed appropriate by the Commission.*
 4. *Within the two (2) week period following the Commission action, the applicant may, by written notice to the Commission and the City Council, appeal the decision to the City Council. After review and consideration of the factors set forth in Section 400.1050 hereof, the City Council may override the decision of the Commission by a three-fourths (¾) vote of its full membership.*
 5. *Within the two (2) week period following the Commission action, the City Council may, by written notice requested by any Council member, have the application referred to that body. After review and consideration of the factors set forth in Section 400.1050 hereof, the City Council may override the Commission decision by a three-fourths (¾) vote of its full membership.*
 6. *Conditions placed on an approved application shall be resolved to the satisfaction of the City Manager after appropriate consultation with the City Planning Consultant, City Attorney and Commission prior to issuance of a building permit.*

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THIS DOCUMENT CONSTITUTES A PRIVILEGED COMMUNICATION BETWEEN A GOVERNMENTAL BODY AND ITS ATTORNEY AND MAY BE MAINTAINED AS A CLOSED RECORD IN ACCORD WITH THE PROVISIONS OF §610.021(1) RSMo. 2010.

MEMORANDUM

TO: Olivette Planning and Community Design Commission

FROM: Paul Martin

DATE: January 28, 2021

RE: Proposed Accessory Use Zoning Changes

With the council's blessing and Mr. Trejo's assistance, I am proposing some changes to the city's accessory structure and accompanying site plan review regulations.

You may be aware of a recent neighborhood dispute over the construction of a proposed batting practice facility in a residential yard. The dispute brought to light a legal flaw in the accessory use section of the code and an accompanying inconsistency in the site plan review section. This memo explains the two issues and proposes corrective action.

A homeowner proposed erecting a facility that would permit him to engage in baseball batting practice with his sons. The facility would have required permanent attachment to the ground by way of four corner poles, with netting to be draped from the overhanging trees and secured to the poles. The facility would allow the owner and his sons to engage in batting practice while keeping their baseballs contained within the netting.

Section 400.1592 of the Olivette City Code regulates accessory uses and structures. Subsection B lists eleven different structures that are expressly permitted, subject to prescribed maximum dimensions and location limitations. Subsection C provides that any structure not expressly permitted in Subsection B, or that exceeds Section B's noted limitations, must be referred to PCDC for site plan and community design review.

The proposed batting practice facility is not enumerated in Subsection B as a permitted accessory structure, but it is also unlike traditional accessory structures, because it lacked any interconnecting elements (like fencing, beams, or a hard surface) between the corner poles. Because the proposed use did not involve traditional structural elements, the owner's building permit application was approved, in similar fashion to basketball goals and flagpoles. This led to objections from the owner's neighbors. The neighbors hired an attorney to challenge the approval of the building permit by appealing to the Board of Adjustment ("BZA"), and if necessary, to the St. Louis County Circuit Court.

The main thrust of the appeal was that nothing in the code permits the city any discretion in determining what is, or is not, a structure. Instead the code states simply that if something is attached permanently to the ground, then it is a structure. Since the poles of the batting practice facility were permanently imbedded into the ground, by code definition it was necessarily an “accessory structure”, and since this type of structure was not specifically permitted by the code, then it required site plan and community design review, which did not happen.

In my opinion, the neighbors were legally correct in their complaint, and the BZA was required to overrule the issuance of the building permit. The failure to do so would lead to the prospect of costly litigation, and almost certain reversal, if the matter was appealed to the court. I shared this opinion with the BZA, after which the BZA reversed the issuance of the building permit. The BZA also recommended that the council consider an appropriate code amendment to avoid similar issues from occurring in the future.

The city’s fundamental error in addressing the application was rooted in the exercise of discretion to approve a building permit for an accessory structure. That is, for years city staff has approved basketball hoops and flagpoles—which are not listed as permitted accessory structures but which are permanently connected to the ground—without requiring site plan and community design review. This made practical sense, as these “structures” are common and traditional in residential neighborhoods, and requiring PCDC review was overly burdensome for all concerned. But staff relied on this past use of discretion to grant administrative approval of the proposed batting practice facility. If not for the neighbors’ objections, this exercise of discretion, which is not authorized by the code, would have gone unnoticed.

In following up on BZA’s recommendation of an appropriate code amendment, I realized that it wasn’t absolutely necessary—having shown a light on the legal absence of discretion, that mistake was unlikely to be repeated. But the city would still be left with a rigid code provision that did not permit basketball goals and flag poles and that did not grant any discretion whatsoever to staff. This led to the following considerations.

First, the code should specifically recognize basketball goals and flagpoles as permitted residential accessory structures. Homeowners should not be required to suffer the cost and process of, and neither staff nor PCDC should be burdened with, the review and approval of such common residential amenities. Nor should the Zoning Administrator be put at legal risk for permitting such structures without explicit code authority to do so.

Second, as noted above, Subsection 400.1592.C requires that PCDC conduct site plan and community design review for any accessory structure that is not expressly permitted in Subsection B or that exceeds Section B’s dimensional limitations. The city could consider granting explicit discretion to staff in both cases or in either case.

I would recommend against granting staff the authority to permit accessory structures that are not expressly permitted in the code. This could put staff in an untenable position between an applicant and a disgruntled neighbor or neighbors, without any guidelines by which to judge whether an unspecified structure would qualify as a permitted accessory. The absence in the code of an accessory structure merits a fuller consideration of the circumstances by PCDC.

But staff could be granted discretion to permit minimal variations from the dimensional constraints of those accessory structures that the code specifically permits. For example, the code currently

limits play structures to a maximum area of 250 square feet. Depending on the size of the lot, the proposed location of the structure, the existence (or promise) of screening, and other unforeseeable factors, staff could be allowed to permit a minimal increase in area without requiring PCDC review. The purpose of this discretion would be to achieve the goals previously discussed, i.e., the savings of time, labor, and money by both the homeowner and the city.

By extension, PCDC may also want to consider granting staff the authority to require additional measures even if an accessory structure is permitted. For example, if a play structure was proposed to be located as close to a neighboring property as the code allowed, but still presented a significant risk of noise to the neighbors, staff might be allowed to require relocation or screening.

Finally, in exploring the accessory structure issue, we discovered an inconsistency between the required process for site plan review and the city's actual practice.

As noted earlier, applications proposing an accessory structure that is not enumerated in the code, or that exceed the dimensional requirements of the code, require site plan review in addition to community design review. Article XI of Chapter 400 addresses site plan review. Subsection 400.1090.A.2 provides that the Zoning Administrator shall review an 'SR' District application and approve, approve with conditions, or deny the application. Subsection 400.1090.A.3 further provides that the Zoning Administrator's action is subject to appeal to the Board of Adjustment. These provisions undoubtedly reflect a desire to expedite review for single-family residences.

But, these two subsections are not consistent with the process that the city actually uses for site plan review in the "SR" District; rather such review is undertaken by PCDC in the same fashion as site plan review for the "COR" District (found in Subsection 400.1090.B.) Consideration should be given as to whether the single-family review process should be changed to conform with the code, or whether the code should be changed to conform to the city's actual review process. Staff has recommended the latter.

Attached are draft changes to the relevant code sections for your consideration. The proposed changes to Section 400.1592.B add basketball goals and flag poles to the list of permitted accessory structures. The proposed changes to Section 400.1592.C grant discretion to city staff that is limited to the dimensional and location requirements that are listed for specifically permitted accessory structures. Finally, the proposed changes to Section 400.1090 include repealing Subsections A.2 and A.3 and enacting in lieu thereof five new subsections (A.2 through A.6). These new subsections mirror the process for site plan review in the 'COR' District, with the exception of reducing the PCDC's time restraint from 120 days to 60 days.

Please note that the proposed changes are intended only as suggestions for PCDC's consideration. They have been prepared from a "legal" perspective rather than a "land use" perspective, and PCDC should freely consider and amend, or even reject, these changes as the commission sees fit.

Copy: Zoning Administrator Carlos Trejo
City Manager Barbara Sondag