



**Minutes of the
Millcreek City Council and Planning Commission
April 15, 2021
5:00 p.m.
Special Work Meeting**

The City Council and Planning Commission of Millcreek, Utah, met in a special public work meeting on April 15, 2021. The meeting was conducted electronically per Millcreek State of Local Emergency Directive No. 2 of 2020 and live streamed via the City's website with an option for online public comment.

PRESENT:

Council Members

Jeff Silvestrini, Mayor (Virtual)
Silvia Catten, District 1 (Virtual)
Dwight Marchant, District 2 (Virtual)
Cheri Jackson, District 3 (Virtual)
Bev Uipi, District 4 (Virtual)

City Staff

Erin O'Kelley, Planner
Alexander Wendt, Deputy Recorder
Kurt Hansen, Facilities Director
Jim Hardy, Building Services Director
John Brems, City Attorney (Virtual)
Francis Lilly, Planning and Zoning Director

Planning Commission Members

Shawn LaMar, Chair (Virtual)
Ian Wright (Virtual)
Skye Sieber (Virtual)
Scott Claerhout (Virtual)
Christian Larsen (Virtual)
Dave Allen (Virtual)
Victoria Reid (Virtual)
Tom Stephens (Virtual)
Aryel Cianflone (Virtual)

Minutes by Alexander Wendt, Deputy Recorder

Attendees: Jalam Rodgers and Mike May.

SPECIAL WORK MEETING: 5:00 p.m.

TIME COMMENCED: 5:03 p.m.

1. Accessory Dwelling Unit (ADU) Presentation and Discussion; Erin O'Kelley, Planner

Mayor Silvestrini welcomed everyone to the meeting. Mayor Silvestrini stated that House Bill 82 Single-Family Housing Modifications mandates that cities permit accessory dwelling units (ADUs) within a building. The purpose of the meeting was to have a joint discussion between the City Council and Planning Commission on the issues that follow accessory dwelling units. Mayor Silvestrini explained that there would be no public comment at this meeting because it is

essentially a work meeting. However, residents are encouraged to send emails to staff and the City Council on the issue.

Erin O'Kelley, Planner, stated that the purpose of the meeting was to review items in the ADU ordinance draft that were unclear because it was necessary to get the opinion of the City Council and Planning Commission together. All four community councils had reviewed the ordinance draft as well as the City Council and Planning Commission. The most recent draft of the ADU ordinance was available to be downloaded on the Millcreek website. Ms. O'Kelley explained that H.B. 82 prohibits a city from establishing restrictions on certain types of ADUs. The bill requires municipalities and counties to classify certain accessory dwelling units as a permitted use and prohibits municipalities and counties from establishing restrictions or requirements for certain accessory dwelling units in certain circumstances. Internal accessory dwelling unit means an accessory dwelling unit created within a primary dwelling, within the footprint of the dwelling. The new draft ordinance recognizes three types of ADUs. Internal ADUs as defined by the State and regulated by the State, attached ADUs which is added to the existing house, and detached ADUs, a separate structure or part of a separate structure in the rear yard.

Ms. O'Kelley rhetorically asked what Millcreek could do regarding internal ADUs. A municipality may prohibit the installation of separate utility meters, prohibit the alteration of the appearance and design of the home, require a primary dwelling, require that parking requirements for the single-family home are met, require a license to rent the ADU, prohibit ADUs in mobile home parks, and require some parking standards. There are also adjustments to the building code. There are general minimum requirements for safety that include, smoke and carbon monoxide detectors, egress windows are required, single HVAC systems are allowed for both units, fire separation between units is required, and circuit breakers are required to be accessible.

Ms. O'Kelley explained that the City engaged in public meetings in January and February 2021 that resulted in changes to the draft ordinance. These changes added language addressing internal ADUs, altering the process by which a property owner may get an attached ADU permitted, and altering the process, setbacks, and other standards for detached ADUs. Staff has adjusted detached ADU parking requirements and building requirements for lots that have a slope greater than 30 degrees. Commissioner Claerhout asked if an ADU and primary dwelling can share a circuit breaker. Jim Hardy, Building Services Director, said that the circuit breaker must be accessible to anyone in the building. Mayor Silvestrini asked if the draft ordinance would address city code enforcement and ADUs. Ms. O'Kelley, said that staff has not begun to touch on the code or business license issues. Mayor Silvestrini said that other changes to City code may be made. Ms. O'Kelley asked the City Attorney, John Brems, if the code enforcement changes should be added in the ADU Ordinance. Mr. Brems replied yes, the changes should be added to the ADU ordinance. Mayor Silvestrini said that if the changes deal with ADUs then the code changes should be included. Staff asked that all ADUs be a permitted use. Ms. O'Kelley explained that the City could allow an attached ADU as a permitted use but if the ADU owner would like the City to state whether the ADU is legal then the City would review the ADU and issue a compliance determination and record that determination on the property. When properties change hands, people can be aware of the requirements. Staff may add a section regarding liens.

Ms. O'Kelley asked that the City Council and Planning Commission discuss the areas of the draft ordinance that had not been finalized. Detached ADUs are the most concerning ADUs to residents of Millcreek. Staff was still receiving feedback that the proposed setbacks listed in the ADU ordinance were not appropriate and do not work for detached ADUs. This was still undecided for multiple reasons. She asked if a detached ADU should be treated the same as a single-family home and therefore have the same setback standard. The current draft states that if the height of the ADU increases the setback should increase, like a detached garage. If that is the case, a greater minimum setback standard could result in an unachievable setback if the ADU is greater than 14 feet. As the height increases, the setback increases from the side and rear property line which means the ADU will be forced to be put in the middle of the backyard which some property owners think is an inefficient use of open space on their lot. While keeping the ADU height 14 feet or under to meet the minimum setback seems reasonable, many property owners think that the best use of the land is to have a two story ADU with a garage on the bottom to accommodate parking requirements and screen from adjacent neighbors.

Ms. O'Kelley explained there are existing detached ADUs, or other buildings in the City that people would like to utilize as a detached ADU that do not meet this standard and would not be eligible for an ADU. Ms. O'Kelley said detached ADUs are the most impactful ADU to adjacent lots and with the variety of lots in Millcreek it cannot always be predicted how property owners will be impacted therefore a detached ADU should be a conditional use permit. A conditional use permit adds cost and time to a property owner that can be an unreasonable burden and therefore people will be less likely to apply. This has been demonstrated in many cities in the County that require a conditional use permit (CUP) for a detached ADU. Due to the nature of a detached ADU being in neighborhoods, it is a concern that these conditional use permit public hearings may turn into disputes between property owners and not an adequate review of code and detrimental effects that is required by state code for a CUP. Staff is concerned that having residents apply for a conditional use permit will clog up the land use application pipeline and cause increased time periods between the time a property owner applies for the CUP and receives approval. This would be in addition to applying for the building permit and then the building process if the ADU is a new build.

Ms. O'Kelley said there were currently ADUs in Millcreek that residents would like to have permitted as legal. These ADUs most likely do not meet any or all standards in the draft ordinance which are designed to mitigate detrimental effects to adjacent properties. Should the detached ADU not be allowed to be used, it is very likely the use may continue anyway illegally and not be monitored or that the building will become useless to the property owner and therefore become a burden or be left unmaintained. The current draft does not propose how existing ADUs should be permitted if they do not meet our requirements. If you have an existing ADU and the ADU does not meet current setback standards, then you could not use the ADU. Staff feels that creating a special exception process specifically for existing ADUs gives an unfair advantage to property who have an illegal ADU compared to ones who have waited to make theirs so they can build to the City's standards and meet all requirements. Many residents have come forward and said they have an ADU, but it is not currently legal. Much like existing ADUs, it is very likely that existing garages do not meet any or all the standards outlined in the draft that are designed to mitigate detrimental effects. Most importantly, garages in the City have a different setback standard and are much closer to the property line than the draft allows.

Converting an existing garage to a habitable space involves a large amount of building code modifications. These modifications can be costly, and in some cases, even more costly than buying a prefabricated ADU plan or building a new ADU outright.

Ms. O'Kelley explained the staff recommendations as follows. From a staff perspective the setback requirements should be 8 feet for new builds with the same height and setback requirements for garages. All ADUs should be a permitted use to allow for the easiest method of allowing a property owner to have one on their lot. If they do not meet the detached standards, they can have an attached or internal ADU. Existing ADUs should not be treated as a permitted use or legal but should be treated as a non-complying structure and thus subject to either a land use hearing or hearing in front of the Planning Commission. This will be noticed to adjacent property owners and the ability to impose conditions is available should the situation call for it. Existing garages in Millcreek should not be allowed to be converted to an ADU.

Mayor Silvestrini asked for thoughts. Chair LaMar said he favored a 10-foot setback. Commissioner Allen asked for clarification on 8-foot setback rules. Ms. O'Kelley explained that once a home or ADU goes over 14 feet tall then for each foot over 14 feet the setback gets increased by one foot. Ms. O'Kelley added that many people want to build on top of their existing garage and sometimes they have accommodated for that setback. Kurt Hansen, Facilities Director, asked if ADUs are subject to RCOZ (Residential Compatibility Overlay Zone). Ms. O'Kelley said yes. Mayor Silvestrini asked if there was an exceptional height allowance when the property is next to a commercial lot. Ms. O'Kelley said that exceptional height is allowed if the property is next to a commercial or residential multifamily zone. Commissioner Allen asked if staff had thought about when a conditional use permit would become appropriate to consider. Ms. O'Kelley said that staff has thought of different ways that a conditional use permit might be triggered. If someone decided they would build an ADU that did not meet the code, then that is a variance. A conditional use permit is when people meet conditions for the use. Staff has not thought about the neighbors giving their consent. Mayor Silvestrini said that there is arbitrariness when neighbors say yes someone can do this ADU but not in other cases. There needs to be written standards which takes away flexibility. Commissioner Stephens said that if a conditional use application does not meet the standard it fails as a conditional use. There would be arbitrariness to allow the noisiest applicant to have their plan okayed when the compliant applicant does not.

Commissioner Allen said if there is an 8-foot setback it could be a permitted use, however if the setback is different, then the builder must apply for a conditional use permit. Francis Lilly, Planning Director, said that there is precedence for this. There is an option in the Foothills and Canyon Overlay Zone for a slope waiver. The applicant must demonstrate granting the slope waiver creates a better situation than not. The word of caution is these are complicated to apply, and the slope consideration was fiendishly difficult to write. It would be tricky to strike the balance. Chair LaMar said maybe there are two options; option A could be a permitted use and option B has different standards to allow for flexibility. Ms. O'Kelley asked if there is a maximum, what is the more lenient option, bearing in mind there are residents who do not want a ADU too close to their property line. Chair LaMar said that less than 8 feet could be appropriate

next to a commercial property. Commissioner Allen said he is fine with the 8-foot standard. Mayor Silvestrini asked for more ideas. Council Member Uipi said that she is in favor of 8-foot setbacks instead of 10-foot setbacks. Council Member Reid said that 8-foot setbacks was fine. Mr. Brems said he did not have a problem with different standards, the conditions must be articulated in the statute. Mayor Silvestrini said that the condition cannot be if the neighbors say the ADU is okay, staff needs to document the conditions in writing.

Chair LaMar said brainstorming with the Planning Commission could allow flexibility. Mr. Lilly said staff has discussed arranging windows or making them translucent but not transparent and arranging lines of sight between the ADU and another residence. Ms. O'Kelley said page 8 of her presentation has some of the potential standards. Ms. O'Kelley asked what the goal of leniency was or what was staff trying to preserve with leniency in the code regarding ADUs. Mayor Silvestrini said that perhaps leniency can be good if there is a reason to locate the ADU in a different location on the property because that ADU could be less obtrusive to neighbors. Commissioner Allen asked if the Planning Commission is comfortable if the standards are met then the use is permitted. Chair LaMar said he is very guarded; this is new for the Planning Commission. Chair LaMar said that the ordinance will need updates at some point and reviewing these changes will be educational. Commissioner Stephens said he favored it being a permitted use from the beginning. Commissioner Stephens said the problem with the conditional use process is what the Planning Commission could do to mitigate detrimental effects. The route that the Planning Commission must adhere to is so narrow with no outcome that would have been better if it was a permitted use. Commissioner Larsen said he was hesitant to make ADUs a permitted use because perhaps the Planning Commission can make better recommendations based on the scenario.

Mayor Silvestrini said he was inclined to defer to what the Planning Commission would like because they are the group that must conduct the review. The Planning Commission would have to explain why they could not simply deny the application. Commissioner Allen said he preferred the dual standard approach because then it is difficult to have conditions. Commissioner Stephens explained that permitted uses and conditional uses are prescreened by the Planning staff, so it would be rare that an application comes to them where standards are not met. Commissioner Cianflone said that if people meet the requirements and must come before the Planning Commission then it is just extra superfluous work for the Planning Commission and the resident. Commissioner Cianflone asked for review of the ADU ordinance every six months or so. Ms. O'Kelley said that the Planning Department in Salt Lake City must give a ADU report once a year. Salt Lake City is changing their ordinance because of those reports. Commissioner Larsen said that as someone who lives where ADUs are a problem, it might be best to look at the detrimental impacts that may have occurred in Salt Lake City. Chair LaMar, said that if the Planning Department is hit with many ADU applications after July 1st they could change the process after the ordinance takes effect to lessen the burden.

Commissioner Reid asked if the Planning Commission is suggesting that there be two ADU standards or that all ADUs be subject to conditional use rules. Chair LaMar said he liked the idea of two ADU standards. Commissioner Reid said that perhaps most should be permitted, and

exceptional cases are a conditional use. Chair LaMar said some should be simply a permitted use, but there are other ADUs that should be subject to additional conditions depending on the piece of land or what is next to the ADU. Ms. O'Kelley said it sounds like a large portion of ADUs on eligible lots would have their ADU fall under a permitted use and less eligible lots would be subject to a conditional use option. Commissioner Claerhout said that capturing as many permitted uses as possible is best. If the lot is significantly less than ideal, then the owner could go to a hearing in front of the Planning Commission. Commissioner Cianflone asked about Planning Commission authority to reject an application. Ms. O'Kelley said she did not think the ADU ordinance would be drafted that way because it would be too subjective. Commissioner Claerhout said that he favors more to be permitted uses as opposed to conditional uses. Then if things look like they need to be given a conditional use route then change the ordinance. Commissioner Larsen said that he agreed with permitting as many as possible but have the less eligible lots go through conditional use process.

Commissioner Allen suggested that existing garages that do not comply with current standards have eligibility through a conditional use permit. This helps expand the housing pool. There are garages in Millcreek that do not meet any standards because of when they were built. Therefore, it could be worthwhile to consider these in a conditional use process. Mayor Silvestrini said there are many nonconforming ADUs in the City. There is a benefit to legalizing them in the City, so they are licensed, meet life safety standards and are known to the City. The City may not bring properties into compliance if the requirements are onerous. Ms. O'Kelley said staff has determined if someone has an existing garage, and they want it to be an ADU and it does not meet the setbacks, it could not be a conditional use because all garages have different setbacks. Special exception processes in the City Code are not ideal because they are grey areas. A special exception is not granted outright so applicants would receive denials. Commissioner Allen said he realized that not all of these can be granted. However, he is supportive when there is a process in the City Code. Mayor Silvestrini said that standards must be applicable even when there are exceptional situations.

Ms. O'Kelley said she would like to treat existing garage ADUs separate from other ADU types. Commissioner Wright said that 90% of the garages in his area are right on the property line, there are existing ADUs in some of them that are not compliant at all. Commissioner Allen said you can fit a ADU into the building without adding onto it if the structure was previously permitted. Mayor Silvestrini said the ordinance will require parking requirements. Chair LaMar asked if someone built a new garage as a garage and then converted it to an ADU to bypass the setback rules then there should be rules to prevent people from bypassing the setback rules later. Commissioner Allen said that if someone secretly builds an ADU now and then tries to get it permitted it should not be allowed. Mayor Silvestrini said the non-conforming use ordinance does address this to some extent because it requires a ten-year history. Commissioner Wright asked how you quantify age for a non-conforming property. Mayor Silvestrini said that staff will search for a building permit, which should exist if someone built a garage. There are other ways to determine the age of a building without a building permit if it comes to that. Commissioner Cianflone asked if there is value in a garage becoming an ADU. Mayor Silvestrini said he shares the concern about parking. Commissioner Allen said in many cases people use their garage as a

storage shed and they have a carport for their cars. Commissioner Cianflone said that the ordinance be very clear about exceptions. Mayor Silvestrini said that the City cannot force people to use their garage for parking, but the City can make sure that they do have enough on property parking. Mr. Lilly said that there is a provision in the off-street parking ordinance. If someone converts their garage into habitable space, they must find one extra covered parking space on their property. Commissioner Wright asked if the group is assuming that all garages meet the required setbacks. Commissioner Allen said he thinks there should be a process for a garage that does not meet the setbacks. Commissioner Wright said that the issue of ADUs is going to create concern among neighbors. There are many garages that take up a lot of property space. People will be concerned about privacy and noise. Commissioner Allen said many people use their garage as a woodworking space. These are noisy uses too. He asked if an ADU was worse than a woodshop. Commissioner Wright said he would rather gamble on a neighbor who has a hobby than a permanent neighbor in a garage ADU.

Council Member Jackson said someone asked her about converting a guest house to ADU. Ms. O'Kelley said that this draft does not allow someone to convert a garage to a ADU and it does not allow a guest house conversion either. Commissioner Stephens asked how the recent draft talks about off street parking. Ms. O'Kelley said she was not sure if she could add a prohibition on on-street parking to the ADU ordinance. Mayor Silvestrini said that the City can require one additional off-street parking for an ADU, but this is all the City can require per state law. Commissioner Stephens would like to know if the City could prohibit on-street parking at night for an ADU. Commissioner Allen said that there are other ordinances that prohibit on-street parking during a snowstorm, or the Commission could say that they will not count on-street parking as part of the parking count. Mayor Silvestrini said that the City is examining changes to the ordinances on secondary driveways. Ms. O'Kelley said that Planner Robert May, reminded her that the City already has rules regarding a Land Use Hearing for changes to a non-compliant structure. Chair LaMar noted there was a prohibition for second utility meters and wondered why. Ms. O'Kelley said that most utility companies do not want residents to install a separate meter, and it ensures that the ADU and primary dwelling will always remain one lot. Chair LaMar asked why skylights are not allowed and if solar panels would be allowed. Ms. O'Kelley clarified that the language in the draft says that skylights are allowed. Chair LaMar explained may potential exceptions to the prohibition on transparent windows for ADUs. He asked staff to examine this. Chair LaMar asked about minimum requirements for an ADU. Ms. O'Kelley explained that residents were concerned about people putting tiny homes all over their property. That is why staff requires a foundation and it prevents a multitude of tiny homes. Commissioner Stephens asked for some review on minimum size requirements for detached ADUs because other cities have these requirements. Chair LaMar asked about the requirements for family definitions. Ms. O'Kelley said that the City does not touch family definitions. Chair LaMar then asked about limiting the number of people in an ADU. City Attorney John Brems said the City should stay away from that prohibition.

Ms. O'Kelley said that residents would like to know when the end is in sight. Mayor Silvestrini said that he will ask staff to make this a priority because the State statute goes into effect July 1st hence it is important to get this done as fast as possible. Mayor Silvestrini said that there will be

enough changes for this to go back to the Community Councils before adoption. Mr. Lilly clarified that the State statute goes into effect in October not July 1st. Mr. Lilly said it would be good to take this to the Community Councils with all deliberate speed. Mayor Silvestrini said that the City Council should hold a public hearing and take the new draft to the public.

Mayor Silvestrini thanked everyone for their time and their input. Ms. O’Kelley thanked everyone for their input. Mayor Silvestrini was not sure how many people would apply for an ADU, but he hoped it would be an avenue for affordable housing.

ADJOURNED: Council Member Catten moved to adjourn the meeting at 6:53 p.m. Council Member Uipi seconded. All Council Members voted yes. The motion passed unanimously.

APPROVED: _____ **Date**

Jeff Silvestrini, Mayor

Attest: Elyse Sullivan, City Recorder

