

**Minutes  
Public Hearing  
Ashton Planning and Zoning Commission**

April 19, 2017  
7:00 p.m.

**Attendees:** Commission Members: Chairman Mike Hogle, Matt Brady, Robert Reimann, James Reynolds, Norman Watkins, Administrator Tom Cluff and Deputy Clerk Jan Warnke.

Also in attendance were Bill Stephens, John Grube, Janean Mower, Janalee Albertson, Patty Litton, Bonnie Burlage, Ron Palmer, Sheryl Hill, Sharlene Bergeson, Shon Shuldberg, Holly Shuldberg, Mamie Jorgensen, Jed Hill, Jacob Hill, Andy Jorgensen, Jim Jorgensen and Sara Dee Harrigfeld.

The commission skipped the Introductory Business and went right to the public hearing.

**1. Public Hearing**

**1. Text Amendment to the Development Code, to include: The use of any accessory building as a commercial office or shop.**

Chairman Hogle called the public hearing to order and stated that the purpose of the hearing is to amend the Ashton City Development Code to include: the use of any accessory buildings as a commercial office or shop. He then asked Deputy Clerk Warnke if the hearing notice was published. She replied that the hearing was noticed in the Standard Journal on March 31, 2017 and April 7, 2017. The Chairman asked the commission if any of them had a conflict of interest and there were none. Next the Chairman turned the time over to Administrator Cluff for his report.

Administrator Cluff started out with a summary of the application that Ron Palmer had approached him because he would like to build a shop and a house on property that he owns at approximately 570 Baker Rd. The shop would be used for his business. The Development Code allows accessory buildings to be used in this way as part of a home business, but limits the floor area to 1000 sq. ft. (17.64.030B). Mr. Palmer asked if the rule could be changed. The proposed amendment would change the Development Code so that larger accessory buildings could be used as commercial offices or shops, provided the owners apply for and receives a Class II permit. The addition to the Code would read: The use of any accessory building as a commercial office or shop. This language would be added to the Lower Density Residential Zoning District Class II Permit Uses and the Higher Density Residential Zoning District Class II Permit Uses. The P & Z uses the following procedures to review changes to the Development Code: The P & Z holds a public hearing. Then after the hearing the P & Z shall determine whether the proposed amendment is consistent with the comprehensive plan, and recommend that the council approve or disapprove it accordingly. Mostly this means that you need to be able to say why your recommendation fits with the Plan. Your discussion needs to focus on the Comprehensive plan and whether this fits. Prior to preparing this report, the City received a

written comment from Susan Baker. Ms. Baker is concerned that the change would allow stand-alone shops in the residential zones and that the proposed change is not compatible with the Comprehensive Plan; specifically goal A.5, that single family dwellings be the principle use in the Low Density Residential District, and that secondary uses be compatible with a single family character. The P & Z will need to decide whether this change will mean that single family homes are no longer the principle use in these zones. You will also need to decide if the large shop sizes are compatible with a single family character. The P & Z will need to review these and decide which ones are relevant to the proposed change. Then, you will need to decide if the proposed rule is in accordance with those policies. Finally, the P & Z needs to review the application, hearing testimony and the City's rules and make a recommendation to the City Council whether to deny or approve the proposed change. Regardless of which way you recommend, you need to be able to explain, as clearly as possible, why you are making that recommendation, and why it is in accordance with the Comprehensive Plan. Mr. Cluff then asked the commission if they had any questions for him. Commissioner Watkins asked if adding the language still gave them the latitude to get information on where a particular parcel is and still be able to do this on a case by case basis. He doesn't want this to be a blanket type situation. Administrator Cluff reiterated that they would review each application on a case by case basis. Then they would take the comments at the hearing and look at the rules and see if they fit. Commissioner Watkins asked how one decision would affect the next one coming up. Administrator Cluff told him that because each of their decisions are on a case by case basis it means that they do not have to approve every application if they do not fit the Code. You have to say legally why you can't. Each decision is not precedent setting with the exception that if you allow one person with a particular use you cannot deny another person for the same use. You're reviewing these permits based on the facts on each individual case.

Chairman Hogle reminded those present that all statements given must address the merits of the proposed amendment to the code. They will be given 3 minutes and must state their full name and give their physical address. He turned the time over to the public. Administrator Cluff told the chairman that the commission should hear from Ron Palmer first.

Ron Palmer – Stated that as he had proposed earlier that he had purchased a 2 acre lot. They were originally planning on building a shop but after doing some research we decided to split the lot and put a house on the front of the lot facing Baker Road for our parents. Then we would build a shop in the North West corner in the back. The shop would strictly be used for storage for our equipment such as scaffolding and ladders. The shop would also hold their office. There wouldn't be any large deliveries because all of those deliveries would be to the job site. The only added traffic would be to the home and his office staff. Mr. Palmer asked if the commission had any questions for him. Commissioner Watkins asked if the access for the shop would be on Baker Road. Ron stated yes, the access would be on Baker Rd. Commissioner Reynolds asked if there was any access on the West side of the property. Mr. Palmer replied no. He would have to get an easement through Fishers to access that side.

Chairman Hogle thanked Mr. Palmer and turned the time over to those who would like to testify.

John Grube – Decided not to speak.

Janalee Albertson 261 Walnut – After hearing the commission talk about this she is opposed to the code change. She stated that we have zones for a reason and if we start changing a little here and a little there, even though Mr. Cluff stated it was by a case by case basis, then where does it come to the point that it is a legal case by case basis? If you do it for one person then you have to do it for another. Who knows what the next person will come in and ask? Maybe the next person is going to ask to go another story higher because they don't have the room to spread out. I'm afraid this is going to lead up to what we are all worried about with the hotel that is coming in. She is very skeptical about how this case by case basis would appeal. Nothing against Mr. Palmer, but I'm afraid if we start, changing the code for someone, especially in a small town where we may not know how all of the laws work, we are going to get someone who will find out what you have done and come in and push to see how far they can go. How far do we go before we have an eight story building or something else we cannot control and our facilities cannot handle. She said again that she was worried about this and hoped that the commission would not approve it.

Bonnie Burlage 1253 N 3500 E – She mentioned that she was a former Planning and Zoning commissioner and was the county coroner. She is concerned about an office or shop in an accessory building for much the same as Ms. Albertson. Another concern is after one case there will be someone who says that you let him have that so why can't I have this. She is also concerned about the street safety. She sees kids walking home from school every day on the streets because there are very few sidewalks. She stated that several years ago there was a child killed by a truck going around a corner too fast. She doesn't think that large shops in a residential are a good idea. Nothing against the Palmers but I feel that if we allow 1000 sq. ft. shops or larger in residential areas that kids are going to get hurt. A lot of our roads are not going to stand up to the heavy equipment. If someone can do this at the edge of our city then why can't someone in the middle town do the same thing? She feels there will be a legal battle because of this change if the commission allows this to happen.

Sheryl Hill 238 Idaho – Ms. Hill is opposed to the proposed text for the following reasons. She stated that she had a lot more to say than she could say in 3 minutes. She had some figures that she wanted them to look at and a table of numbers regarding shop size. She ran through the three basic reasons that she opposes this change. First the proposed text amendment will make it possible for Class II permits to be issued for construction of commercial buildings and businesses in residential zone districts. This contradicts and negates the purpose of creating distinct residential, commercial and industrial zone districts. Furthermore it does not comply with six of the seven sections of the comprehensive plan. The second reason is the proposed language is vague and will introduce uncertainty into the development code. The proposed change includes the word, accessory and section 17.08.030 of the Development Code defines this word as follows: Accessory buildings and uses are those customarily associated with and clearly subordinate to a principal building or use that exists on the same lot or parcel. At the March 2, 2017 P & Z meeting Mr. Cluff explained that Mr. Palmer was looking at a building that is 6000 sq. ft. That is a very large building and it's hard to imagine how that could fit the definition of an accessory building that's subordinate to a house. Third, it's not possible to discuss the text amendment without discussing the reason it has been proposed. This did not arise from public opinion that the development code should be amended to allow an accessory building for commercial purposes in residential zone districts. It arose from Mr. Palmers desire to build a 6000 sq. ft. shop on property that was located in a lower density residential zone at the time he purchased it. Mr. Palmer originally proposed to rezone the property from residential

to commercial, but Mr. Cluff correctly, and in keeping with the goals and policies of Ashton's comprehensive land use plan, recommended against that proposal. The alternative that Mr. Cluff provided to the commission was a change in the development code. However there is a third alternative, which is to simply deny Mr. Palmer's request to build a commercial building in a residential zone. She believes there are good alternatives here. Ashton has an urban renewal agency for commercial buildings that need development in the commercial area. Sheryl stated that she would be willing to work with Mr. Palmer to find an alternative.

Shon Shuldberg 222 Willow Ln. – He is in favor of the code change. He says that there are a lot of homes with shops with more sq. ft. than even the house. Every guy moves to Ashton to have a shop. He likes the idea that the language is written vaguely enough to give the commission control over the decision if it fits in the area, or if two and a half acres fits the criteria for a 6000 sq. ft. shop or not. I like the fact that people could have a shop and go bigger and have a commercial use for it. He stated that he knew that the commission didn't get a lot of fore's at the meetings but he was for this.

Chairman Hogle asked Administrator Cluff if he had any rebuttal statements. Mr. Cluff did not. The Chairman then asked the commission if they had any questions. They did not have any further questions. The chairman closed the hearing and called for a discussion. Administrator Cluff asked the commission if they wanted a copy of Ms. Hill's written comments. The chairman stated that, in all fairness, they should see the written comments. Commissioner Brady stated that the City already allows shops and office space in 1000 sq. ft. or less. He wondered how that 1000 sq. ft. was decided upon. He feels that it is an arbitrary limit. He then asked administrator Cluff if he thought this was just something that was copied from somewhere else. Administrator Cluff didn't know where the rules came from or why they only allowed up to 1000 sq. ft. Commissioner Reynolds suggested that the rule may have developed from the size of most of the lots. Most lots couldn't fit large shops. He also liked that, with Mr. Palmers shop, all of his equipment would be able to be kept inside and wouldn't be an eyesore. It will also help clean up the area and make it a little more presentable. Mr. Palmer's property is big enough to handle that type of situation. Chairman Hogle agreed with Mr. Reynolds that the property was large enough to handle a larger unit in the back of the property. He also stated that he understands the community's concern about the traffic. He worries more about the local drivers and not so much about the construction workers. Mr. Hogle pointed out that there is large trucks that already go down that road. He also doesn't think that more shops are going to be built in our entire community. Mr. Reynolds said that he didn't see, within the city limits, that there was that many options for anybody else to do anything. Commissioner Brady doesn't think that anyone else owns that much ground in the city. He states that in the comprehensive plan, under residential land use goal, we shouldn't do anything that is incompatible for a secondary use of the family residence. This is something that is already allowed we are just quibbling over the size of shop. We wouldn't be throwing this wide open to every shop that comes down the road because we've discussed, there is a difference between someone having a shop for storage and someone putting in a planer mill that's going to be run at 6:00 am on Saturday mornings annoying their neighbor. Mr. Brady goes on to say that he would like to see the amendment of the text to go forward. Commissioner Watkins stated that the piece of property was certainly unique in its location. It's on the outer edge of low density and has historically been used as a commercial piece. He thinks that Baker Road as an access is far better than anything on the West side. There is already commercial traffic on that road. He

tends to lean towards what Mr. Palmer is trying to do because of its uniqueness and only because of that.

Chairman Hogle opened the floor for more comments from those present. He told those present that they would have a couple of minutes to speak.

Sheryl Hill –Stated that the issue before the commission was the change of the Development Code. It's not necessarily what Mr. Palmer's going to do with that property. That will come before you again as a Class II Permit Application so that's a subject for another hearing. Once you approve the text amendment it would allow the application for a Class II Permit in residential zones. That's when you would hear all of the information about Mr. Palmer's property. When you change the code you need to look over six aspects of the Comprehensive Plan. This property is unique, but a 6000 sq. ft. building is going to be next to other people's back yards. There used to be a waste water capture system there but we wouldn't think about saying there used to be a waste water capture system there so let's put one there now. The whole concept of code is to move the City forward not backward. There is a property adjacent to the property Mr. Palmer owns that is littered with abandoned cars, collapsing buildings and looks like it may be the original homestead, but that property is the last developable property that we have in Ashton. Fisher's property, with those large lots, including Mr. Palmer's, those could be subdivided for homes. Habitat for Humanity has people waiting for homes in Ashton and they can't find lots to build on. She stated she knew Mr. Palmer had this property that he wants to do something with but it's zoned residential and there are alternatives. She would hate to see a change in code that would allow commercial businesses infiltrating into residential areas. She thanked the commission for allowing her to speak again.

Ron Palmer – He appreciates everyone's comments and stated that he had not bought the property on a whim. If he was to subdivide this piece of property then there would be a lot more traffic coming through the area than what he is proposing. On 2 acres you can put a lot of homes in and with it comes a lot more traffic on that road. He doesn't have heavy equipment. The largest piece of equipment he has is his pickup. He doesn't have semis and dump trucks that he would stage there. The only heavy equipment that would come in would be what was necessary to build the shop. He said that he loves the City and he does not want to do anything that would hurt the City. He wants to go through the proper steps to do this.

Chairman Hogle asked if anyone had any other comments or if the commission needed any further discussion. Administrator Cluff suggested that the commission go over Ms. Hill's written comments and look at the 6 points she raises and determine if they think that they apply or not apply.

Chairman Hogle read the 6 concerns: **A.3.** Assure the new development is organized as neighborhoods and is integrated with existing neighborhoods. Commissioner Brady didn't see how it was disruptive to the surrounding neighborhood. He feels if it were not for the size there would be no discussion at all so if it's a use we already allow we are just quiviling over size. **A.4.** Encourage the development on vacant or undeveloped land. **A.5.** Maintain a single family dwelling as a principle use of the City's established low density residential districts and allows a secondary uses that are compatible with the single family character. The Comprehensive Plan encourages commercial businesses to be on the street but it is a recommendation not a law. Administrator CLuff told the commission that they, being the custodians of the Comprehensive

Plan, need to decide what it means. The City has Commercial Zoning that encourages and requires buildings to be up to the street. The fact that you also allow some shops in a residential whether it be just a 1000 sq ft or bigger does not necessarily violate your Comprehensive Plan. That's up to you to decide. You have to decide if Sheryl is correct that that should be interpreted that every commercial building and every rule about commercial buildings should always push commercial building to the street. Mr. Stephens asked Mr. Cluff if there was anything in the regulations concerning a Class II Permit in Residential because that is what we are talking about here. Mr. Cluff answered by saying that in each zone there is Class I and Class II uses. In Low Density Residential Zones a Class II Permit is used for schools, churches, daycare centers, parks and subdivisions for one and two family dwellings. It is proposing to add another line for accessory shops to be permitted as a Class II use. They will not be changing the zoning. **B.4.** Ensure commercial buildings front on a public or private street. **B.5.** Avoid commercial zoning beyond the frontage of Main Street. Maintain a pronounced commercial zone along the frontage to avoid the spreading of commercial uses into adjacent residential areas. Mr. Cluff pointed out that this uses two different terms and there is possible confusion because of that. That is talking about commercial zoning and we are not talking about changing zones tonight. The policy in the Comprehensive Plan says it will avoid commercial zoning off of the front street use and avoid spreading uses into adjacent residential areas. So the question is really a two part question. Does this conflict with the Plan in where commercial zoning should be and does it conflict with the plans of where commercial uses should be. Again that is up to the commission to decide that while you can explain why. **E.2.** Land use incompatibility between adjacent uses and/ or between various land use districts should be avoided. Commissioner Brady said that regarding B.5 the commission was not changing the zone and that this is the commercial use that they would allow in a residential zone if it was a certain size. He sees it as an arbitrary issue unless they can look at them on a case by case basis to see if they are compatible. Look at what kind of traffic they are going to have, are they going to be a conflict with the neighborhood or are they going to be something that enhances economic development in the town. Commissioner Watkins states that it is hard to find viable wording. He doesn't feel the words themselves bother him as long as he knows that they can and will be done on a case by case basis. He also questioned how you explained all these other facts by just this one statement. Everyone is worried about what might happen. Are we good on this, as far as what might happen in the future? If someone is wanting to do something on Cordingley and Fishers property do we have a standard for that. Commissioner Brady stated that he would rather deal with things on a case by case basis than just have a uniform or blanket rule. He doesn't like situations where people are going to try and dictate to a landowner what they can or cannot use their ground for the purpose they want to use it for. That seems pretty unfair. People will comment that there could be other uses for the land, which is true, but they didn't buy the ground. The owner did, so how do we arbitrarily say no you can't do that. Commissioner Watkins point out that it was easy to back up his words with this project of Ron's. He finds it harder to try to do it on an overall overview of everything. Commissioner Brady interjected that was where they have the protection of Class II Permits where it will be done on a case by case basis and the commission can look at how it impacts traffic flow and all of the other issues. He doesn't believe that this update is inconsistent with the Comprehensive Plan. Commissioner Brady said that he was ready to make a motion.

Commissioner Brady made a motion that the commission recommend to the City Council to amend the verbiage, "The use of any accessory building as a commercial office or shop",

to the development code. Commissioner Reynolds Seconded the motion. Eyes were heard but you could not tell by whom.

Administrator Cluff interrupted the commission and asked that before they made the motion if he could get their direction on the findings of fact to present to the City Council. He asked the commission if he was correct on his understanding on their finding on the following points: **A.3.** Assure the new development is organized as neighborhoods and is integrated with existing neighborhoods. The commission agreed it was not incompatible with the proposal. The reason they gave was that it already is a use that is allowed, other than size. **A.4.** Encourage the development on vacant or undeveloped land. The commission said it wasn't incompatible because it was developing and improving. **A.5.** Maintain a single family dwelling as a principle use of the City's established low density residential districts and allows a secondary uses that are compatible with the single family character. It is not incompatible because they are talking specifically about an accessory building to a family residence not a stand-alone shop. **B.4.** Ensure commercial buildings front on a public or private street. The commission does not find that this is not incompatible because they do not consider it a commercial building they consider it a home business and not a stand-alone business. **B.5.** Avoid commercial zoning beyond the frontage of Main Street. Maintain a pronounced commercial zone along the frontage to avoid the spreading of commercial uses into adjacent residential areas. The commission stated that they were not changing the zoning to commercial so it was not incompatible. **E.2.** Land use incompatibility between adjacent uses and/ or between various land use districts should be avoided. The commission did not see any conflict with this. Mr. Cluff asked the commission if they had any other statement that they would like to make about the compatibility of this proposal with the Comprehensive Plan to the City Council. There were none.

The Public Hearing was adjourned.

Minutes respectfully submitted by Jan Warnke