



## DEVELOPMENT SERVICES

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# MEMO No. 1

TO: City Council

DATE: September 18, 2020

FROM: Kaitlin McCafferty, Development Services

RE: **365-375 Scott Street Group Living Conditional Use**

The Land Use and Planning (LUP) committee of City Council discussed the Group Living Conditional Use on September 16, 2020. City Council members discussed concerns expressed by the City Attorney regarding proposed conditional of approval #2. Staff conferred with the City Attorney and offers the following revisions to Condition of Approval #2 with the attached Draft Affidavit.

Title 20, Section 20.40.070.B restricts density for Group Living uses to 2.7 residents per 1,000 square feet of parcel area in order to help address public facility and service demands and prevent overcrowding. The parcel area of the subject property is 17,477 square feet and the maximum density allowed is 47 residents. In order to guarantee compliance with the allowed density, staff proposes the following revisions to condition #2 for City Council's consideration:

2. ~~In order to comply with Title 20 Section 20.40.070.B the applicant shall restrict density to one (1) resident per bedroom suite and shall provide a copy of the lease agreement with the density restriction, subject to review and approval of Development Services, prior to building permit approval.~~ The applicant shall provide an executed affidavit restricting density in compliance with Title 20, Section 20.40.070.B, filed with the County Clerk and Recorder, subject to review and approval of City Attorney and Development Services, prior to building permit approval.

The City Attorney created the attached Draft of the affidavit which requires the density restriction to run with the land and apply to successors and assigns. The applicant in signing the affidavit is acknowledging the restriction and is the person responsible for enforcing the restriction.

ATTACHMENT: Draft Affidavit dated 9/18/2020

**DRAFT-9/18/2020**

**REAL PROPERTY OWNER BINDING COVENANT AND SUPPORTING AFFIDAVIT AGREEING TO CITY OF MISSOULA GRANTED CONDITIONAL ZONING USE COMPLIANCE REQUIREMENTS**

The undersigned affiant real property owner(s)

\_\_\_\_\_ as successful applicant for a conditional City of Missoula conditional use group living land use zoning privilege for real property located at 365-375 Scott Street in the City of Missoula, Montana, legally described as follows:

**Legal is Lot A in Block 46 of WJ McCormick's Addition and portion of vacated W Pine Street Right-of-way in Section 21, Township 13 North, Range 19 West, P.M.M.**

agrees to provide this zoning compliance covenant to the City of Missoula with supporting property owner affidavit that requires the undersigned property owner and successors in interest, heirs and assigns to comply with applicable zoning conditions and regulations or lose the City of Missoula conditional zoning land use authorization that is granted by the Missoula City Council.

The undersigned additionally agrees that this restrictive covenant supporting affidavit shall be filed at the Missoula County Clerk and Recorder's office and covenants and hereby states that it is intended to run with the land as well as be binding on any and all successors in interest, heirs and assigns.

The undersigned owner(s) hereby recognize, understand, agree and covenant that the applicable City of Missoula zoning regulation group living density regulation calculation applicable to 365-375 Scott Street is restricted pursuant to Title 20, Section 20.40.070.B Missoula Municipal Code (MMC) to 2.7 residents per 1,000 square feet of parcel area in order to prevent overcrowding of the land as well as to help address public infrastructure and public facility service demands where the residential group living conditional use is to be located. Further, it is recognized, understood, agreed and covenanted that the parcel area of 365-375 Scott Street is calculated to be 17,477 square feet which pursuant to provision 20.40.070.B of Missoula Municipal Code (MMC) applicable zoning regulations would allow up to a maximum resident density of 47 residents at 365-375 Scott Street.

In addition, the undersigned recognizes, understands, agrees and covenants that the property owners shall solely be responsible to ensure that the real property owner of 365-375 Scott Street shall provide any and all housing at 365-375 Scott Street in compliance with federal, state and city municipal code laws regulating discriminate in housing on the basis of sex, marital status, race, creed, religion, color, age, familial status, physical or mental disability, national origin, sexual orientation, gender identity, or gender expression.

I/we the undersigned being first duly sworn on oath, state that I/we possess sole ownership interest for myself/ourselves and no other person, association, corporation, partnership or shareholder with respect to ownership of the land identified herein as well as hereby covenant with the City of Missoula that it is my/our intent that this affidavit be a binding covenant running with the land and binding on any and all successors in interest, heirs, assigns and if violated or not complied with by the real property owner(s) of 365-375 Scott Street shall result in the loss of the conditional use zoning land use privileged that has been granted to the undersigned. This affidavit shall be filed with the Missoula County Clerk and Recorder.

Property owner \_\_\_\_\_

Property owner \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_ Notary Public