

Minutes of a Regular Meeting of the Lava Planning & Zoning Commission of the City of Lava Hot Springs, Idaho held Monday, June 24, 2019 at 6:30 p.m., Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho.

Present: Neil Anderson, Commission Chair
Fred Hinz, Commission Member
Curtis Waisath, Commission Member
Lisa M. Toly, Commission Member
Vicky Lyon, Commission Member
Canda L. Dimick, City Clerk

Excused:

Guests: Kody Tillotson, Richard Guthrie and Jordan Cheirrett.

Meeting was called to order by Neil Anderson, Commission Chair at 6:30 pm.

Approval of Minutes

Motion was made by Curtis Waisath and seconded by Fred Hinz approving the April 22, 2019 minutes as transcribed. All voted aye; unanimous.

Public Hearing – Kathleen Cochran’s variance to build an attached 21’3” x 5’4” deck on the north side of her home at 135 East Elm Street, Lava Hot Springs, Idaho.

Motion was made Curtis Waisath, Commission member and seconded by Lisa Toly, Commission Member opening the public hearing. All voted aye; unanimous.

Canda Dimick, City Clerk presented staff report. Public hearing notice was published in the Idaho State Journal on June 9, 2019. Mailings were mailed to all property owners/residents within 300’ of the exterior boundaries on June 10, 2019. Regular mailings were mailed to all property owners/residents within the zip code area. Certified mailings were mailed to all property owners outside of the zip code area. Regular mailing sent to Josh Fisher was returned on June 14, 2019. The address was corrected and letter was mailed back out to Josh Fisher on June 14, 2019. Certified return address notices have been received from everyone except the following: Marsh Valley School District #21 – According to the tracking it shows that letter has been out for delivery since June 13, 2019 and still not claimed; Intermountain Gas Company – According to the tracking shows that letter is arriving late and on its way still not claimed; Julie Crossley – The tracking shows that delivery was attempted and that letter will be returned on June 28, 2019; Century Link – The tracking shows that delivery was attempted and that letter will be returned on June 28, 2019; Michael & Samantha Carr - The tracking shows that letter is in transit and is arriving late. One comment was received by email on June 19, 2019 from Lee

Nickerson and a copy is in the commission member's packets. Sign was posted on site June 17, 2019.

Neil Anderson, Chairman read aloud email comment received from Lee Nickerson for the record "To the Planning and Zoning Commission, I have received a certified letter from Kathleen Cochran in regards to her deck rebuilding at 135 Elm Street, Lot 7, Block 11, North end of said lot. I have no issues with her request. If you have any questions or concerns please feel free to contact me. Thank you, Lee Nickerson".

Kody Tillotson, General Contractor, in attendance representing Kathleen Cochran presented details relating to the variance request and accomplishment plans to replace the existing deck and stairs. The house sits back approximately six (6) feet from property line adjoining East Elm Street. Ms. Cochran has a make shift set of stairs currently from the street to her home. She is elderly and needs an access built to code that will require a landing across the front. The property owner's desire is to build a deck from the front of the home. It is unfortunate how close the home is to the property line. The home has been in existence for years. If an agreement can be reached on the variance for the deck, then the property owner will meet with the City regarding extending a set of steps from the deck into the city's right-of-way that meets code. The existing steps are ridiculous.

Vicky Lyon, Commission Member, questioned if the only existing access to the home is from the street. Kody Tillotson stated that if the City wants to force development of an access from the alley that they would have to figure something out but right now the main and only access to the home is from Elm Street. The rise for steps according to code is seven and three quarter ($7\frac{3}{4}$) inches. The existing steps average rise is nine (9) to ten (10) inches. The process involves building a landing and then extending a deck across the front of the home then extending stairs down, around, back and across. Curtis Waisath, Commission Member questioned the landing need. Kody Tillotson explained that the landing is necessary due to the location and how steep the access is. The home is centered on one (1) lot and access is centered out the front. Landing/deck would be extended to the east and then the process will involve working with the city to try and get access off down the slope. Vicky Lyon, Commission Member commented that she had driven by the house and right now the steps start at the edge of the pavement and they go straight up to the front door. Kody Tillotson, commented that all of the existing steps are in the city's right-of-way except for the last foot. The property owner contacted Kody wanting to know how she can improve her steps. Kody stated that he explained to her that she has an uphill battle because her home is so close to the property line, that there is a setback issue, she has to start with a variance for the width of the lot so that when she approaches the city that it gives leeway to work with developing access off of the landing to the street. Fred Hinz, Commission Member, questioned snow removal effects. Kody stated that the new steps will not impact snow removal unless the city decides to widen the street ten (10) feet to property line and at that point a legal document will have to be discussed with the city that Ms. Cochran will have to sign relinquishing her encroachment rights. Vicky Lyon, Commission Member questioned if the property owner

resides at the residence full time. Kody stated that he is not familiar with how often the property owner visits the home but he would guess maybe a couple weeks a month; she does not live at the residence full time. Kody stated that it is unfortunate where the home was built and that he is not aware of any of its history. The property owner is dealing with a tough situation. The home already encroaches into the required front yard setback. The property owner is not messing with anything other than legally fixing the stairs in compliance with code. Curtis Waisath, Commission Member questioned if a construction drawing of the deck and stairs has been done. Kody explained that he can't do the drawing for the stairs until they get the variance and then the property owner will work with the city on designing the stairs in the encroached right-of-way to the City's satisfaction. The variance is for the deck/landing. The commission expressed that they felt the variance design plan needs to include the extending stairs. Kody explained that he understands that step one (1) is to obtain a variance for the landing on the private property and then he will proceed with step two (2) which is for him to work with City Council to design what will be permitted to encroach within the city's right-of-way. The existing home sits five (5) feet six (6) inches from the property line; it is supposed to sit twenty (20) feet. In order to do any building or repairs to the existing landing, the property owner has to obtain the city's permission. The property owner is asking for a variance to fix up the deck/landing across the front and bring it up to code. A building permit will be submitted for the project. The stairway encroachment is a City Council decision that will be worked out with them. Neil Anderson, Chairman, felt like the encroachment situation should also have to go through the Commission. City Clerk reported that City Council has been dealing with encroachment issues in city's right-of-ways and have been executing permissive license agreements for the ones approved. The license agreements require the home owner to provide a certificate of home owners insurance that covers liability for the structure so that the home owner assumes all risks for maintenance, falls or other claims. Kody explained that basically the property owner at this time can't do anything with the existing structure because of its location and the plan is to improve conditions and build it to code including the installation of hand rails. Vicky Lyon, Commission Member questioned if the existing landing is only in front of the door or across the entire front of the house. Kody explained that there is an existing landing all the way across the front of the house but it is not a deck. Plan is to build a deck. The deck is five (5) feet by twenty-two (22) feet. The house is a non-compliant structure. Curtis Waisath, Commission Member, questioned the need for the deck/landing in order to build the stairs. Kody explained that the deck/landing, stairs and handrail are needed to bring the access into compliance with the building code. The top landing is required by code. The applicant chose to seek the variance for the deck across the full width of the lot because the encroachment impact is no different than a landing in front of the door. Vicky Lyon, Commission Member, commented that for fire hazards a deck across the front of the home would be beneficial for safer exiting through a window if a fire was at the front door. The variance across the entire length of the front of the lot will provide an option of running a sidewalk or something along the side of the building from a legal landing out front. Kody stated that he understands the commission is in a tough spot but he is representing his customer; the

building is built too close to the street and it has a horrible approach and landing so he is asking for a variance to build a legal deck across the front of the house to give the property owner options to develop access. Vicky Lyon, Commission Member, commented that she wanted to make sure that she understands everything. She gave an example by saying that if there are fourteen (14) steps, then ten (10) or twelve (12) of them are located on city property, the last two (2) or four (4) are on private property and then there is the landing running along the front of the home. Vicky Lyon, Commission Member stated that “regardless the steps need to be dealt with and also for proper ingress and egress that is why the owner wants to do the deck across the front as well”. Kody stated that when the stairs are built, they most likely will go down five (5) steps to a landing and switch back because of code. The steps will not be a straight shot down to the street. If the steps were a straight shot, they would be clear out in the middle of the street to meet the rise requirement and it may take eighteen (18) steps rather than twelve (12). Existing steps do not meet the rise requirement. The new steps will be better and safer for the property owner. The property owner can’t fix the steps according to code. A new set of steps have to be installed and that is what the property owner is trying to address with the variance. The variance creates the basis point to give the property owner the ability to build legal access. The property will have either access out of the back or hopefully the city will work with the owner to bring the steps off the front; regardless the property owner needs access out of the front of her home onto a legally landing and the deck is what she is proposing. Kody feels that they are doing the minimum impact as far as he is concerned but it is up with the commission to decide what can be worked out. Vicky Lyon, Commission Member mentioned that the commission needs to figure out a way for the owner to access her home. Kody asked if everyone had seen the property and all commission members acknowledged that they had. Lisa Toly questioned the City’s long term plan on dealing with known existing encroachment situations. City Clerk reported that City Council has been dealing with them on an individual basis and that it depends upon what alternatives are and if changes can be made or moved. If things can be moved back, the City has required that they be moved. If it is obvious that things can’t be moved, the City Council has worked with permissive license agreements to allow it and take the liability off of the city. Lisa Toly, Commission Member, said that depending on what the City’s position is the steps can be built towards the right or left side of the property and asked Kody to explain more about it. Kody stated that he totally understands that the Commission is worried about a precedent and that as a contractor he hates these kinds of things too. The whole town of Lava is always trying to deal with problems. Kody stated that if you look at the property it makes sense; the city is not going to widen the street in the next fifty (50) years. The property owner has approached it from the fact that the owner needs a five (5) foot four (4) inch variance to build a legal landing regardless if the city allows her to access it from the street or not and from there the owner can work with the City to decide what can be done. The city is going to want scenarios. Kody doesn’t know the information yet. All he is doing is step one (1) of a big problem on how to deal with it. Kody suspects that the City will support bringing a set of stairs off the deck and landing them no further than where they do currently. The stairs will not be a straight shot to the street

because of the rise and they will twist and turn. The variance is a first step it's not setting up anything it's just allowing the property owner to set the first basis or step to find a way for her to gain legal access from the street. Kody would hate to see the owner have to establish access off the alley for snow removal and things like that. Access will be the Council's next decision. The owner needs to be able to build a deck across the front for the landing and put a railing around it. Curtis Waisath, Commission Member questioned how low the landing is going to be. Kody explained that the landing is coming right out of the front door; four (4) or five (5) inches down. Curtis Waisath, Commission Member, stated that he still did not understand how the steps are going to extend to the street. Kody visually showed the commission how the steps will switch back and forth from landing to landing until they reach the street where there is a meter and sewer in the way. It is a disaster when the steps reach the street. Curtis Waisath, Commission Member, feels that in order to approve the variance the commission needs the plans for the steps encroaching into the City's right-of-way. Kody explained that the variance for the landing needs to be approved before he can submit engineered drawings with options to the city for the construction of the steps. Kody stated "regardless she has no access and no landing and he can't even touch nor fix the stairs until some kind of variance is in place. If the Commission recommends a variance, the City Council can abide by what the commission recommends, make changes or deny it. Neil Anderson, Commission Chair stated that he personally feels that the property owner is in a bad situation and it is not of her making, the house was built years ago. He thinks the Commission should go ahead and recommend the variance be granted and let the City Council make the decision. Kody asked the City Clerk about a precedent. He feels that this situation is not setting a precedent. Every case is handled individually. The City Clerk explained that the biggest concern is when structures extend into setbacks and then they become enclosed and become part of the interior of the structure; main issue is enforcement concerns. Part of the deck is not going to be too far off the ground. The front of the deck will be elevated just because of the slope/landscape. Vicky Lyon, Commission Member reiterated that to get the correct rise for the steps, they have to wind to keep the steps from landing out in the middle of the street. Kody re-clarified that a landing is necessary and it makes sense to encroach the length of the lot so that the contractor has options to work with City Council. The City Council may deny the stairs but the variance for the deck across the front will give an option to come out and work around to the back side of the home. Lisa Toly questioned who verified property lines for the variance. Kody informed the Commission that the property has not been surveyed; that they have went off of the City's survey marks and they are leaving it about six (6) inches short of that mark. Kody stated that he is not about to build something without a survey that close. Fred Hinz, Commission Member questioned the age of the property owner. Kody guessed around 75. Fred Hinz questioned how long the owner has owned the property. Ms. Cochran has owned the property for 30+ years. Fred Hinz, Commission Member stated that the Commission has recommended granting a lot of variances since he has been on the commission and that there are a lot of variances all over town and a lot of them have set a precedent at the Commission's own fault. Fred Hinz, Commission Member expressed that a variance is a hardship and that half of

the variances granted are not hardships. Fred Hinz, Commission Member feels that Ms. Cochran's situation is a hardship. Commission members agreed that there is no solution. Existing conditions would hinder re-sale and possibly prevent prospective buyers from obtaining financing unless improvements are made. It is unfortunate where the home is located originally. When owners buy homes they have no clue on what kind of future problems they are facing. The encroachment situation exists and the property owner is trying to deal with it through the legal procedures available. The next big hump will be with City Council to see what they want to happen. The variance is step one (1)/phase one (1) of a larger project.

Jordan Cheirrett, neighboring property owner to the east, stated that as he reads the notification as the property owner wanting to build a deck out the front of their house close to the street and the City does not want to allow it. Commission members informed Mr. Cheirrett that they have not said that they won't allow it. The applicant is trying to get privilege to build a deck. It was explained that the front yard setback is twenty (20) feet from property line and Ms. Cochran's home sits six (6) feet from property line; in order to improve anything or for the contractor to touch the steps the property owner has to obtain a variance. The applicant is trying to improve and construct a safe access to the home. Jordan stated that as a neighbor, he feels building out towards the street is beneficial to them; the house is up higher, it is not hanging out over the street, a car is not going to be hitting it. Jordan brought it to the Commission's attention that he doesn't feel his property line next to Ms. Cochran's property is recorded accurately with the City. He believes that his property line is within six (6) inches of Ms. Cochran's house according to the legal description. Mr. Cheirrett stated that he would like to get the property line surveyed and he would like to give Ms. Cochran the property on her side of the existing tree line. Kody informed Jordan that he is the General Contractor and that he will have the property surveyed before they pull a building permit. Jordan will call and talk to Ms. Cochran. Jordan explained that everyone thinks that the property line is where the tree line is but when he bought his house the property line is actually over against Ms. Cochran's house and he doesn't necessarily want the land. Kody stated that the property line matter will be resolved through the survey process and will be submitted with the plan to the City Council once the variance is reached. The applicant is only working on a plan to encroach in front of the house they are very confident on the location of the property line adjacent to the street.

Richard Guthrie asked if he could comment. He used to own the house Mr. Cheirrett owns. Richard asked if Ms. Cochran's house is the little red house because it only sits on one (1) and a half lots. Richard was informed that Ms. Cochran's house is not the little red house. Ms. Cochran's house is to the West of Mr. Cheirrett's house not East.

Kody explained that the variance impacts the North lot line and it is surveyed. Tony Hobson, City Maintenance Supervisor and Kody have strung a line along the North side of the surveyed lot line and he has pulled back a slight amount for safety measures for just this purpose. Kody stated that if the variance is reachable everything will be surveyed and engineered. Jordan asked for a copy of the survey. Kody stated that the survey will be pinned. Jordan will be able to see

it. Kody reiterated that the variance is Phase one (1) of probably a six (6) month project and if the applicant gets denied she will have to look at different options, probably access out of the back door. Kody expressed that he wished that he could help the Commission out more but hopefully he has explained what the applicant is facing and wants to do.

Curtis Waisath, Commission Member made a motion to send the variance onto City Council. Lisa Toly, Commission Member seconded the motion. There was no vote. City Clerk informed the commission that a motion to close the hearing is required before a recommendation can be made. Motion was made by Curtis Waisath, Commission Member and seconded by Lisa Toly, Commission Member closing the public hearing. All voted aye; unanimous.

Curtis Waisath, Commission Member feels that it has been discussed well enough, all the pros and cons and that the commission can vote on it. Fred Hinz, Commission Member, stated that City Council may possibly send it back to the commission. Curtis Waisath, Commission Member, stated that it is a bad piece of old property; it is the way they built in the old days. Fred Hinz, Commission Member, expressed that he feels it is a hardship case; it is not just a decoration or make me look pretty. Lisa Toly, Commission Member, stated that it is a safety issue for everyone going to Ms. Cochran's house, UPS, FedEx, etc. Fred Hinz, Commission Member, stated that is why he questioned the age of the home owner; with that in mind it makes it a hardship. Kody stated that if the property owner lived in Lava year around that the existing conditions would make it impractical.

Curtis Waisath, Commission Member made a motion and Lisa Toly, Commission Member seconded the motion to send the variance to City Council with the recommendation to grant Kathleen Cochran's variance. All voted aye; unanimous.

Lava Mobile Estates Parcel Split/Water Line Extension – Richard Guthrie

Richard Guthrie presented a survey of the parcel split plan and reviewed it with commission members. A Bannock County Parcel Viewer map was provided and reviewed at a prior meeting. Richard proposes splitting an eight (8) acre parcel by separating the lower campground on the South side of Highway 30 from the upper campground/trailer court on the North side of Highway 30. Both parcels already have separate addresses. When Richard met with the Commission prior, there were concerns about legal descriptions of the parcels and separate water connections. Richard reported that he has hired Gem Valley Survey to complete the survey and all the field work has been done. The legal descriptions for both parcels will be available within the next couple of days. Richard reported that he met with City Council and they have approved and will be installing a new water meter for the South parcel with the new fire hydrant installation on his property that is part of the water improvement project. The house located in the trailer court is already on a separate parcel. Richard explained that he figured if he was getting a new legal for the North parcel that it would be a good time to straighten lines around the home parcel. Richard provided a survey map of the house parcel with his proposal to move

the parcel line thirty (30) feet to remove the gas meters serving other mobile homes in the court from the house parcel. Neil Anderson, Chairman questioned if there are any problems with easements. Richard commented that there are no problems with any easements that he is aware of. The City has an easement to access and maintain the sewer lift station already but that shouldn't change. Lisa Toly, Commission Member commented that all easements are usually assigned to the predecessors so that if you were to transfer ownership the easement would perpetuate to the new owner. City Clerk brought it to the attention of the commission and Mr. Guthrie that the City needs to obtain an easement for the water meters and fire hydrant and there will also need to be a private easement for the water line servicing the South parcel that will run through the North parcel. Richard stated that it wouldn't be a problem and he could have Gem Valley Survey write the easement into the legal and if the Commission recommends approval he can have it with the documents he presents to City Council for final approval. The need for a sewer easement was also questioned. The sewer line to the city's pump station services multiple properties. A private easement for the sewer line servicing the North parcel that runs to the city's pump station through the South parcel will be needed. Easements are a good idea for resale purposes. Lisa Toly, Commission Member mentioned that the easement she has through Guthries for the Sunnyside Sinclair's sewage would carry on through the North parcel. The Sinclair's sewer line runs through the North parcel then inter connects to the line going under Highway 30. There is also a recorded sewer line easement from the red brick home located along Highway 30 to the east of the parcel to the City's sewer lift station located in lower parcel south of Highway 30. Richard mentioned that all of the improvements that he has done on the parcel south of Highway 30 has been tied into the sewer line at the City's pump and vent station. Lisa Toly, Commission Member mentioned that it is too bad that the City won't install a main line on the North side of the Highway for future growth. City Clerk reported that she has talked with the engineer's about extending a water main north of the highway and the concern is that the existing six (6) inch line limits service ability and that is why the fire hydrant being installed is limited to filling trucks only because of the danger of collapsing the line. Richard agreed that it is what the engineer's informed him too. He said that he is foggy on the amount of pressure but there sounds like there is a ton. Richard expressed that he does not know the fire codes. The City's pressure is at one hundred and ten pounds (110) pounds per square inch at the peak in the middle of the night on Main Street. The pressure on the line to the Lava Mobile Estates would be less due to elevation. Richard reported that he has a pressure regulated on his side of the meter set at forty-five (45) so that it doesn't damage lines in the older trailers. Richard mentioned that the nice thing about the fire hydrant is that when they bring the water on down they will have a place to bleed pressure off and have fire suppression. The City's engineers will have to look at the system to determine how much future development can be connected to the six (6) inch line. Richard questioned if the City has other phases of the water project. City Clerk reported that there is a second phase mainly for the purpose of drilling a redundant well required by DEQ and working on some additional things that weren't accomplished in the first phase, some additional piping but nothing North of Highway 30. The only improvement planed in the

project North of Highway 30 is the fire hydrant which is being installed in phase one (1). Richard mentioned that it would be good if a city main was ran half way through the park and put the fire hydrant there and cap it for future growth in case the owners of the adjoining seven (7) acres or Sunnyside Sinclair want to be annexed and connected to the City's water service. A local improvement district could be formed to extend services for future growth with property owners consent. Motion was made by Lisa Toly, Commission Member to move Mr. Guthrie's parcel split proposal onto City Council with a recommendation of approval. Motion was seconded by Curtis Waisath, Commission Member. All voted aye; unanimous.

Building Code Ordinance Draft

A lot of the unanswered questions require input from other departments/agencies. City Clerk reported that Ken Fagnant, City Fire Chief, is pretty sure that the State has adopted the 2015 edition of the International Fire Code but he is checking on it to confirm. The City hasn't received anything from the Idaho Division of Building Safety about additional fees. City Clerk provided commission members with a copy of the 2015 Edition of the International Fire Code, Chapter 5 provisions and administrative rules titled IDAPA 18.08.01 regarding driveway and private road requirement so that the commission can see what the provision in the ordinance are referencing. City Clerk is confident that the City Fire Chief will support referencing the International Fire Code provisions. City Clerk will put pressure on the City Attorney to obtain legal opinion on deleting section 104.8 regarding liability. The City Attorney is very proactive on protecting the City's interest and unless he sees conflicting language the City Clerk feels that the attorney will recommend that the provision not be deleted. City Clerk provided the commission members with copies of the International Building Code appendix and asked them to review them before the next meeting. The ordinance draft references adopting appendix D, E, G and J. If Commission members see other appendix provisions that they feel need to be adopted, they were asked to make note of them so they could be discussed at the next meeting.

Other Business – Schedule Public Hearing on Zoning Ordinance Amendment regulating and permitting solar energy systems within city limits.

The City Clerk reported that she has pulled out the proposed zoning ordinance provisions that the commission recommended for solar energy systems and drafted an ordinance amendment for consideration. The City has had some pressure to enact an ordinance from a property owner that wants to install a solar system before the state incentive program ends. The proposed ordinance has been sent to legal counsel for review. City Clerk expressed concerns with wording in the definition; specifically the wording that says a solar energy system may be ground mounted (i.e., placed on top of the ground surface) or roof mounted (i.e., placed on or as an integral part of a building). Roof mounted systems may extend an additional two feet (2') beyond the maximum height allowance of the zoning district in which they are located. Ground mounted systems shall meet all required standards for accessory structures. City Clerk questioned if the wording in the definition is more of a design standard and should be moved or included in another provision in

the ordinance. The attorney's recommendation(s) will be the only change(s) to the ordinance draft. The ordinance will require a public hearing before it can be adopted. The hearing will be just for the solar system ordinance provisions. The City Council is still reviewing the proposed zoning ordinance that the commission forwarded to them. Lisa Toly, Commission Member questioned if there is a time limit to install a solar system that a property owner applies for. Energy systems will require a building permit to install and there are time limitations with the building permit process. Discussion followed regarding the state and federal credits for solar systems. Neil Anderson, Commission Member, commented on his recent personal experience with installing a solar system and the credit/rebate. Including a project completion time frame provision in the ordinance was discussed. The commission does not want a bunch of open building permits for systems that property owners want to exercise in the future. It was determined to let the building permit time restrictions handle completion time. Fred Hinz, Commission Member made the motion to schedule a public hearing for the solar system ordinance for the next meeting. Curtis Waisath, Commission Member seconded the motion. All voted aye; unanimous.

Schedule Next Meeting

Next regular meeting date is July 22, 2019. Motion was made by Lisa Toly, Commission Member and seconded by Fred Hinz, Commission Member scheduling the next meeting for July 22, 2019 and to schedule the public hearing for the solar system ordinance amendment at that time.

Adjournment

Motion was made by Fred Hinz, Commission Member, and seconded by Curtis Waisath, Commission Member, to adjourn. All voted aye, unanimous. Meeting adjourned at 7:31 pm.

Transcribed by:

Signed:

Canda Dimick, City Clerk

Neil Anderson, Commission Chair