

Minutes of a Regular Meeting of the Lava Planning & Zoning Commission of the City of Lava Hot Springs, Idaho held Monday, September 23, 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
Gary Cooper, City Attorney

Excused:

Guests: John Taylor, Michelle Taylor, Kade Taylor, Victor Lyon, Craig Lyon, Shane Beeson, Crystal Beeson, Mary Hinz, Amy Pike

Neil Anderson, Commission Chair called the meeting to order at 6:30 pm.

Approval of Minutes

Motion was made by Vicky Lyon and seconded by Fred Hinz tabling the minutes. All voted aye, unanimous.

Public Hearing – John & Michelle Taylor’s Height Restriction Variance for New Single Family Dwelling

Vicky Lyon, Commission Member, questioned the City Attorney if there is any issue with her being involved in the public hearing because her son is married to the Taylor’s daughter. Gary Cooper, City Attorney asked Vicky Lyon if she felt that it causes a conflict for her. Vicky Lyon stated no that she just wants it to be on public record. Gary Cooper, City Attorney advised that is all she needs to do is put it on public record.

Motion was made by Curtis Waisath, Commission Member and seconded by Fred Hinz, Commission Member to open the public hearing. All voted aye, unanimous.

Canda Dimick, City Clerk presented the following staff report. The public hearing notice was published in the Idaho State Journal on September 8, 2019. Proof of publication is on file. Mailings were mailed to all property owners/residents within 300’ of exterior boundaries. Regular mailings were mailed to all property owners/residents within the zip code area on September 6, 2019. Certified mailings were mailed to all property owners/residents outside of the zip code area on September 7, 2019. Regular mailing send to Nicole Insley was returned to sender on September 16, 2019 as not deliverable as addressed unable to forward. Nicole Insley

had moved. Certified return receipts have been returned and received and are on file as follows:

1) Julie Crossley – Tracking shows that letter has been available for pickup since September 9, 2019; 2) Tony Glenn & Ann Detton Curtis – Tracking shows that letter was delivered on September 16, 2019 but certified receipt has not been returned. Written comment was hand delivered to City Clerk from Montelle and Amy Pike on September 9, 2019. Written comment was hand delivered to City Clerk from Rocky Mountain Power, Jim Burton, Representative, on September 11, 2019. Written comment was hand delivered to City Clerk from Hartman K. and Beverly C. Harris on September 19, 2019. Written comment was hand delivered to City Clerk from Michael and Camille Vice on September 20, 2019. Written comment was emailed to lavahotspingscity@gmail.com addressed from Brian and Allison Hinz was received on September 20, 2019. Written comment was emailed to lavahotspingscity@gmail.com from Kenneth Fagnant, Lava Hot Springs Fire Department Chief on September 20, 2019. Sign has posted on site since September 16, 2019.

Neil Anderson, Commission Chair explained that the purpose of the hearing is for John and Michelle Taylor's variance request on the height of the building that they want to build at 95 East Fife Street in Lava Hot Springs, Lots 5 & 6. Neil Anderson, Commission Chair turned the floor over to John and Michelle to present their case.

John Taylor explained that the only reason that they are going for the height variance is due to the slope of their lot. It has a pretty severe slope to it. The house that they are building is essentially the same house that was built on Fife the red A-frame that was completed six to eight months ago, same height as that house. Mr. Taylor stated that speaking with the general contractor that built the A-frame they had an issue trying to get below the height restriction they ended up having to build up a bunch of dirt around it to make it legal within the code. It didn't change the height of the structure. They just had to move a lot of dirt around the property to make it comply and to forego having to move a lot of dirt around unnecessarily because their lot slopes so much they figured they would go through the variance so that it wasn't an issue down the road so that is the only reason for the height restriction. John Taylor explained that they are trying to build that particular model because it will fit in with their existing house; it is an A-frame, similar height. John stated that he measured his house today and it is a little bit higher than what the new house will actually be; so it is not like it is going to exceed his house which is closest house in the neighborhood. John Taylor stated that is the reason for the variance and that they could move the house, they could move a lot of dirt and sink the house down a little bit which is fine they can do that but they do want the driveway to come in from the alley because that is the only access that they have to their existing house/property. They are going to do a parking structure/awning on the back of the house and they want it kind of level with the main floor so you are just walking into the house instead of having to go down some steps and then into the house. The way the lot is structured, the hill slopes two directions. They would have a nice ability on the one side, on the west side of the house, to have a nice open area where it wouldn't have to be concrete poured, they could open frame it and have a nice window looking

out towards the west but if they have to sink the house and move dirt up to accommodate the twenty-five (25) foot he thinks it is just a lot of unnecessary dirt work, honestly to be able to do that. John Taylor restated that is the reason they have applied for the variance.

Neil Anderson, Commission Chair, stated that the Planning & Zoning Commission had approved a parcel split and the Taylors had to go to Bannock County to get it finalized. Neil questioned if the parcel split has been taken care of.

Michelle Taylor reported that it is still in the process.

John Taylor reported that they had hired Wade Olorenshaw to find the corners and he did that. John stated that he was supposed to submit or he thought that he was going to submit it to the County. John stated that he checked on it a couple of weeks ago and he hadn't done it so he reached out to Wade and he said that he would get it filed. John state that as far as they know, because he sent them another bill saying that he did it. John hasn't checked with the County to see if it was recorded; all survey work has been done.

Neil Anderson, Commission Chair, stated that the City needs the paper in the office in order to really make a final decision on the variance.

John Taylor state that he understood.

Neil Anderson, Commission Chair, stated that it has to be split or there is a violation for having two houses on the property. They have to be separated or there isn't enough square footage for two homes.

John Taylor stated that he didn't want to argue but he had checked with the city before they decided to split the lot and they said that they have plenty of space to put two homes on the lot even if they didn't split it but they want to split it so they will get it done.

Neil Anderson, Commission Chair, commented that they would like to have that done.

Neil Anderson, Commission Chair, asked John Taylor if they were going to build the house to live in.

John Taylor stated possibly, that is the intention and asked if that is relevant.

Neil Anderson, Commission Chair, commented that the City is curious about what the use of the property is going to be.

John Taylor stated that he understands that.

Neil Anderson, Commission Chair, commented that the home is in an R-2 Zone.

John Taylor restated that he understands that Randy Benglan was looking at building a bunch of houses on a bunch of parcels he has and questioned if he had to answer that question.

Neil Anderson, Commission Chair, responded “yes”.

John Taylor questioned he did?

Neil Anderson, Commission Chair, restated “yes”.

John Taylor asked if he ever planned on living in it?

Michelle Taylor commented that he is not going to live in five.

Neil Anderson, Commission Chair, responded “no”

Micelle Taylor stated “so let me clear up a misconception”.

Gary Cooper, City Attorney, advised the commission that they do not have to go there if they are not going to bring it up.

John Taylor stated that their intention is to live in the property and then figure out what they are going to do with the other property.

Neil Anderson, Commission Chair, commented “ok”.

Neil Anderson, Commission Chair, stated that the City is a little concerned with the fire protection.

John Taylor asked if it was in reference to Ken’s comments.

Neil Anderson, Commission Chair, stated “yes”.

John Taylor stated that he has questions on that so he wants to get some clarifications on that and that he had left a message with him today because this is the first time that he seen the letter was today and he didn’t call him back. He wants to clarify the requirements.

Neil Anderson, Commission Chair, read Ken Fagnant’s letter aloud for the record.

I have been asked to review the above referenced variance request application relative to fire protection and fire code compliance. I have a few concerns that I would like to address, primarily with fire and emergency service access. Various codes such as the UFC and UBC are developed in concert with NFPA guidelines. Together, these codes establish the basis for safe development and building practices. They also form the basis for the City’s relevant ordinances. In general, within a municipality, dwellings are built opening onto a city street. Primary emergency service access to said structure is via that city street and not by an alley. The variance request does not address this issue, but rather, one of structure height; with the planned structure exceeding allowed height by 1 foot, 2 inches. I have no opposition to granting the apex height variance as the roof design is such that fire department capability can achieve access to the planned roof and windows if necessary, and provided that east and west sides of the proposed

structure are kept clear at least 12 feet to allow for deployment of a 35 foot extension ladder. I am however concerned with overall apparatus access to the planned structure. The site plan calls for the only access being off of an alley to the south and not the city street. By rule, alleys may be identified as a secondary fire access road, but not for primary access. Alleys are generally narrower and with lesser clearance and surface requirements than that of a city street. Streets have a minimum requirement of 20 feet all weather hard driving surface plus additional parking width (7.5 ft per side or 15 ft) for a total width of 35 feet. Alleys do not allow for this space requirement. I realize that several dwellings exist within the City that open primarily onto alleys; however, these were all built prior to current codes and relevant ordinances being enacted, and therefore are “grandfathered” and allowed to exist without modification, and not relevant to this discussion. One such property is the swelling at the east dead end of the described alley. Fire operations conducted at the proposed site would effectively block the alley, thereby trapping residents further along the alley who would have no other means of egress. If the alley to the south of the property were the designated primary access, fire operations could not be adequately conducted there without creating an entrapment hazard for other residents. An alley simply cannot support traffic flow while being occupied by emergency apparatus. I encourage cognizant government officials to consider not only fire department access, but also possible impact to other existing homeowners and properties while deliberating whether or not to allow deviation from current ordinance and code requirements. Signed Kenneth E. Fagnant, Fire Chief.

Neil Anderson, Commission Chair, commented that it is a definite concern that the City has to have and the City understands that the home above is Taylor’s but if they build another home and sale that one then the City has a family that has that concern in the case of a fire.

John Taylor questioned what the remedy would be to allow them to build on the lot.

Neil Anderson, Commission Chair, commented that as far as fire protection is concerned putting in a sprinkler system in the house.

John Taylor commented so Randy Benglan, going to use him as an example because it is something that the commission has already approved or working towards it, he only has alley access to his buildings. John Taylor questioned if the City is requiring Randy to put sprinkler systems in his houses.

Neil Anderson, Commission Chair, explained that Randy is developing an additional access and setting structures back so that he can develop driveways on the private property.

John Taylor questioned if the driveways are secondary or primary access.

Neil Anderson, Commission Chair, stated “primary”.

John Taylor questioned if that is where the fire trucks are going to roll to.

Neil Anderson, Commission Chair, said “yes”.

John Taylor then questioned why the fire trucks can't roll to their primary access which is the front of their property and the secondary access they will use as any other property owner uses to access their property from the alley.

Neil Anderson, Commission Chair, explained that the problem is that with a building that high getting to it from the street.

Michelle Taylor commented that their existing house is higher, much higher.

John Taylor then added and it is further set back. This house is going to be twenty (20) feet on the setback so that is where the property is going to be.

Neil Anderson, Commission Chair, stated that he knows and understands that but that house is already grandfathered in.

Michelle Taylor commented that it wasn't the issue; the issue is, is it reachable. It is either reachable or it is not, whether it is grandfathered in or not.

John Taylor asked if they were to build a driveway in from the front of the house, from Fife, that would alleviate the concern because they are going to park on the street on Fife just like Michael Vice does on his, he parks his cars on the street and walks down into his house. So if they were to excavate and build a parking area in the front of their house that would make it their primary entrance the alleyway is going to be a secondary entrance. John Taylor questioned if that would alleviate it.

Neil Anderson, Commission Chair, commented that it would alleviate the fire department's problem.

John Taylor said "ok we can do that".

Neil Anderson, Commission Chair, said "ok".

John Taylor then said "we can park on the street that is fine".

Neil Anderson, Commission Chair, said "ok"

John Taylor asked to reiterate it. He stated that he is open to whatever. He questioned if they need to actually level it out to park a car off the street or can they just build some steps like Michael Vice has and park their car on the street and walk up to their house. He questioned if that would alleviate it.

Neil Anderson, Commission Chair, stated that it would need to be worked out with Ken.

John Taylor commented that he would work it out with Ken. He stated that if it doesn't alleviate the problem then what the Commission is telling him is that he has an unbuildable lot.

Neil Anderson, Commission Chair, said “no”.

John Taylor said “well it sounds like it”.

Neil Anderson, Commission Chair, commented that we are saying that the structure is too high and questioned what the reason is for needing the extra one (1) foot two (2) inches.

John Taylor explained that it is because of the slope of the lot and they are trying to keep the house level with the back entrance and it is fine, they can move a bunch of dirt and drop it down two (2) feet so that you are walking out of the basement rather than being a true walk out basement. John stated that he is willing to totally forget the variance, it was going to just make it a little more what they wanted as far as being able to access it from the back but it is not a deal breaker for them.

NOTE: Digital recorder stopped working at this point. It was not noticed until the end of the meeting. Everything transcribed from this point were taken from the City Clerk’s hand written notes.

The Commission then moved onto written and oral testimonies.

NEUTRAL

It was noted for the record that Rocky Mountain Power has no objections to Taylor’s proposal.

IN FAVOR

No written testimony was received in favor and no one in attendance had signed in wanting to speak in favor.

AGAINST

Neil Anderson, Commission Chair, called on Shane Beeson and Crystal Beeson, 85 West Fife Street, Lava Hot Springs, Idaho to speak.

Shane Beeson stated that he only has one comment he questioned why new construction can’t meet ordinance requirements.

Crystal Beeson stated that she has the same comment/question.

Neil Anderson, Commission Chair, read the written comment received from Montelle and Amy Pike for the record.

To Whom It May Concern:

We are writing to oppose the variance to height restriction for the new construction proposed by John and Michelle Taylor. Our City’s Zoning Ordinance purpose is to promote “better building

and development practices.” We do not see the benefit of allowing the Taylors to break the zoning laws for this construction. Increased height will have a negative impact on adjacent property owners by blocking the view. Granting of this variance will be detrimental to the adjacent properties and is contrary to the public interest. Their application for variance is incomplete. It does not include a statement demonstrating that the requested variance “will not be in conflict with the spirit and intent of the comprehensive plan for the city and will not effect a change in zoning.” (Ordinance No. 1982-2 p.43) There is no statement on how the proposed development relates to the comprehensive plan or its compatibility with the neighborhood. The application also does not include total square footage of the site or parcel number. In addition to opposing the variance to height, we have concerns that their publicly stated use of their properties for vacation rentals is unlawful and will have a negative impact on our property. Their application for variance does not state the proposed use of this property. The Taylors have a history of disagreement with our City’s Zoning Ordinances and an unwillingness to listen to the neighbors’ concerns. This summer they publicly stated at a City Council Meeting their intent to use their property as a vacation rental. The Taylor’s disagreement with our City’s Zoning Ordinances should not be a valid rational for those rules to not apply to them. Instead of approving the variance, a better solution would be for the Taylors to find an alternative site that would not require a height variance and would be zoned for use as a vacation rental. John Taylor stated at the City Council Meeting that he has money to invest and could invest it elsewhere. I encourage them to find a more suitable site for their proposed development. One where they can fully comply with zoning laws for both height and use. In summary, we oppose any variance for the development of the property on East Fife Street. Zoning codes and building and planning ordinances exist for the good of the community. They rules are there for a reason, to protect the neighborhood, therefore no variance should be granted. We encourage you to look carefully at the needs of the neighborhood and community as you consider this request. Signed Montelle Pike and Amy Pike

Neil Anderson, Commission Chair, read the written testimony received from Michael and Camille Vice, 104 East Fife Street, PO Box 518, Lava Hot Springs, ID 83246 for the record.

Dear Lava Planning & Zoning Commission:

This letter is in regard to the restriction variance sought by John & Michelle Taylor at 95 E. Fife. Though the 14 inch height excess really seems like no big deal, wouldn’t it be possible to lower the foundation in order to meet the required height without filing for a variance? Lava’s zoning ordinances and required rules should always be met whenever possible without having to file for a variance. If this application gets approved for the 14 inch height excess, does it not begin to set a precedence for the next application for an 18-24 inch excess. The zoning ordinances and specific zoning areas were established for multiple reasons, with one being to protect the residents living in those zones. That being said, there are concerns with the Taylor’s intended use of the property. In a City Council meeting this summer, the Taylor’s publically stated that they intend to use this property for a rental. There is no mention of that in the application, as it is

vague and incomplete. The letter from the Taylor's was also vague, as they could have put that information there. We urge the Planning & Zoning Commission to consider the pertinent chapters of Lava's Comprehensive Plan that mentions the public meeting attended by over 100 residents. There was overwhelming support for keeping residential areas quiet with no rentals. The applicants seem to have a disregard for following the ordinances and rules. The tree or trees along Fife St are not trimmed and obstruct the already narrow road. The Taylors have also encroached onto Jade Beus' property east of their house by placing their garden on his property. How did they not know where their property lines were, especially in light of their zoning application? That's theft of property when someone else is paying taxes on that property. Others seem to know where the line is, but they don't or don't care. With all the above being said, we regretfully feel that we need to object to the Taylor's restriction variance and hope that the commission will take our comments into consideration and deny the application. Signed Michael Vice and Camille Vice

Neil Anderson, Commission Chair, read the written testimony received from Hartman K. Harris and Beverly C. Harris for the record.

Hartman K. Harris and Beverly C. Harris, 37 East Booth Street, PO Box 382, Lava Hot Springs, Idaho 83246. Both say no. Signed Hartman K. Harris and Beverly C. Harris

Neil Anderson, Commission Chair, read the written testimony received from Brian and Allison Hinz, PO Box 734/15 W. Booth, Lava Hot Springs, ID 83246 for the record.

To Whom It May Concern:

Please accept this letter as notification that we are against the variance request for lots 5 and 6, block 9 of W.J. Fife's addition which the Lava Planning and Zoning Commission is holding a public hearing for on September 23, 2019. Where this is new construction, we feel that they should be able to conform to the building requirements that are in place, and that it would set a precedence for future building applicants if the City were to approve this variance. Thank you for consideration in this matter. Signed Brian and Allison Hinz

Neil Anderson, Commission Chair, read an email received from Jade Beus, 555 Deer Drive #110, PO Box 11523, Jackson, WY 83002 for the record.

To Whom It May Concern:

Thank you for brining to my attention the variance filed by the Taylors, however I do object to allowing this variance as restrictions are placed and enforced within city limits for a reason. I would like to go on official record with my objection. Should you have any questions, feel free to reach out. Best, Jade Beus

Neil Anderson, Commission Chair, then turned the floor back to the applicants, John and Michelle Taylor to address their final comments.

John Taylor addressed the history of variances issued for height restrictions. He stated that the City Clerk informed them that a height variance had been granted in the past for a structure on West Fife Street (460 West Fife). John then addressed Michael Vice's comment regarding acquisitions about using neighboring property for garden space. John reported that they are looking at negotiating a purchase of the property from Beus. John and Michelle Taylor both then stated that they will comply with the ordinance have no intentions to use the house as a vacation rental unless the City's ordinance changes to permit the use.

Motion was made by Curtis Waisath, Commission Member and seconded by Vicky Lyon, Commission Member to close the hearing. All voted aye, unanimous.

Commission Members expressed that they needed more time to consider all of the input presented and review the fire chiefs concerns.

Gary Cooper, City Attorney, informed the Commission that they have thirty (30) days to make recommendation to City Council. A special meeting will have to be scheduled to comply with the thirty (30) day time period.

Fred Hinz, Commission Member, questioned the City Attorney about how many objections are needed from neighboring property owners before a permit can be denied.

Gary Cooper, City Attorney, presented each Commission Member with a copy of the variance process ordinance provisions. Provisions were read aloud. The City shall consider variances to the terms of the Ordinance which will not be contrary to the public interest where, owing to special conditions, a literal unnecessary hardship and under such conditions that the spirit of the ordinance shall be observed and substantial justice done. In acting upon such variance the City shall make a full investigation and shall hold a public hearing and shall only grant a variance upon finding that the following are true: (a) That the granting of the variance will not be in conflict with the spirit and intent of the Comprehensive Plan for the City, and will not affect a change in zoning; (b) That there are exceptional or extraordinary circumstances or conditions, applicable to the property involved, or the intended use thereof, which do not apply generally to the property or class of use in the district, so that a denial of the relief sought will result in: (1) undue loss in value of the property; (2) inability to preserve the property rights of the owner; (3) the prevention of reasonable enjoyment of any property right of the owner; (c) The granting of such relief will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements of other property owners, or the quiet enjoyment of such property or improvement. Within thirty days after the public hearing, the Planning and Zoning Commission shall recommend to the City Council approval or disapproval of the application for variance as presented.

No action was taken or decision made.

Building Permit Form Revisions & Review

City Clerk reported that a list of the Commission's suggested changes have been sent to the State and that she has requested a workable online document format from the state so that she can make changes.

Building Code Ordinance Draft

City Clerk asked Commission Members if they had looked over the building code ordinance draft that was marked up by the building inspectors. No one had reviewed it since the last meeting. No action was taken.

Zoning Ordinance Draft

City Clerk reported that the City Council has not had time to work on reviewing the ordinance draft lately and that they have some time scheduled on the September 26, 2019 Special Meeting agenda.

Other Business

Lisa Toly, Commission Member read her resignation. Dear Council members: Planning & Zoning members: It is with my sincere regret that I resign my position on the Planning & Zoning Board. My husband and I have moved outside of City limits making me ineligible to be a member on the board. I am sorry to have to resign as I have enjoyed serving the community in this capacity. Please accept my resignation today 9/23/19. Never the less, I leave with the highest respect for the fellow members and the work they do for the community. Yours very truly, Lisa M. Toly

Schedule Next Meeting

Motion was made by Vicky Lyon and seconded by Curtis Waisath to schedule a special meeting for October 14th, 2019 for the purpose of making a recommendation to City Council regarding Taylor's variance application. All voted aye, unanimous. Vicky Lyon, Commission Member stated that she would like to visit the site to look at ingress and egress and also meet with Ken Fagnant, Fire Chief prior to the meeting. City Clerk cautioned Commission Members about visiting the site with a quorum. When a quorum is present, a meeting notice has to be posted.

Adjournment

Motion was made by Vicky Lyon and seconded by Fred Hinz to adjourn. All voted aye. Meeting adjourned at 7:46 pm.

Transcribed by:

Canda Dimick, City Clerk

Signed:

Neil Anderson, Commission Chair