

Minutes of the Regular Meeting of the Lava Planning & Zoning Commission held Thursday, March 28, 2013, 6:30 p.m. at the Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho.

Present: George Linford, Chairman
Fred Hinz, Vice Chairman
Katie Smith, Commission Member
Dave Sanders, Commission Member
Allison Hinz, Secretary

Excused: Curtis Waisath, Commission Member

Guests: Steve Jones, Lava Homes, LLC

The meeting was called to order at 6:30 p.m. by George Linford.

Approve Minutes – February 28, 2013

Katie Smith made a motion to approve the minutes as written. Dave Sanders seconded the motion. All voted aye, unanimous.

Lava Homes, LLC – Steve Jones – Presenting completed plans for nightly rental cabins

Steve Jones approached the Planning & Zoning Commission with a copy of the plans. He reviewed his plans to build 6 nightly rental cottages in the C1-C2 zone on lots 28 and 38 on Elm Street. He stated that his request is consistent with the permitted uses for that zone. He reviewed the abbreviated site plan from the last meeting. He stated that the plan complies with the zoning ordinance to make it a nightly rental. He reviewed the layout and amenities. He stated that he is seeking the approval of the Planning & Zoning Commission on the preliminary site plan.

Mr. Jones stated that there are no set back requirements in this zone and they can build to the property line. They are not building to the property line. They are compliant with the watershed. Each unit is engineered to have their own electricity, water and sewer connections. There will be no gas, they will be heated by electricity.

Each unit will be titled, as he builds them, in his name. They will not be under Lava Homes, LLC, they will be in his personal name. He may have customers who want to lease these properties from him at a later date, but each unit will remain in his name. They will all be held in Fee Simple Title.

They will be elevating the whole property area. There will be a retaining wall on the west and east side of the property because they have to elevate the property so high to get the nightly rental cottages at street level.

Fred Hinz asked about the fire code requirements with the space between the units.

Mr. Jones stated that they are fully compliant, according legal counsel and engineering, with the Bannock County fire code.

Fred Hinz stated that he sees where one retaining wall is and asked where the second one is.

Mr. Jones referred to the plan to show where the retaining walls are. There is a retaining wall on the north side of the property as well as the east and west sides that are next to the Blue Moon and Evelee Rush's property.

Dave Sanders asked about off street parking on each side.

Mr. Jones stated that there are 6 parking stalls for each 3 units, 2 per unit. They are all off-street parking. The parking stalls exceed width and length requirements. They are only required to have one, they went above and beyond the requirements. The reason they are elevating the property is to accentuate the view of the cabins. It provides aesthetic appeal for the consumer and the community at large.

Dave Sanders asked about the walkway.

Mr. Jones stated that is a walkway. There is a barbecue area, no open fire. It is a very nice motel room with its own four walls, extra features and amenities. It has a loft and balcony. He described it as "a motel room on steroids." It offers privacy that you don't get in a regular motel room. He travels a lot and is very sensitive to the interruptions you receive in a common hotel environment. Here you get the feel of being in a cottage in a motel room. That's why they are calling them the "Elm Street Nightly Rental Cottages."

At first they talked about making a ten room motel, servicing mostly the Blue Moon clientele and calling it "Stumble In", but they thought better of the idea and decided to raise the bar. He referred to the drawing and stated that they have utilized, fully and completely, every square foot of the property. There will be no watering, no lawn maintenance. In general, the only maintenance that would need to be done is snow removal. He is asking the commission for their recommendation to build the nightly rental cottages.

Fred Hinz asked if he plans to sell off the cottages individually.

Mr. Jones stated, yes, at some point and time he does plan to sell them off individually. He intends to do that because he has created an upscale hotel environment. There will people who come to stay at his property that say that they would like to have one of them and would ask him if he would sell one. It would be sold as a business, a nightly rental cottage. They would have to have an individual business license, because they cannot be used as a residence.

George Linford asked if he would have to have a subdivision to sell them individually.

Mr. Jones stated that in residential they would. These are not residential. They are individual motels that have to be run as nightly rentals. They are fully compliant with the zoning.

Fred Hinz stated that he needs to look at that ordinance.

Dave Sanders stated that the subdivision is already in place.

Katie Smith stated that this borders on a Planned Unit Development as well.

Dave Sanders stated that those two lots have already been recorded as A.W. Hall's and he would have to follow the requirements of that subdivision. Those two lots are compliant with square footage, side yards and for what it is intended to be used for so the subdivision is in place. You are looking at following the requirements that are in place when the subdivision was recorded.

George Linford stated that Mr. Jones has two lots.

Mr. Jones stated that he has two commercial lots. It would be used for commercial purposes. He is building six businesses.

George Linford stated that Mr. Jones is putting houses on the property.

Mr. Jones stated that he is building six motel rooms, not houses. They do look like houses, but that is the charm of it.

George Linford stated that Mr. Jones plan is to build one initially.

Mr. Jones stated that he is building one. He is going to improve the front half of the property first, on Elm Street. He has complied with all of the requirements for building a motel on a piece of property that is 55 feet deep by 20 feet wide and then he is building another one right next to it with the same dimensions.

Dave Sanders asked about specific plans for phasing.

Mr. Jones stated that he does not have specific phasing plans yet. They want to feel out what the marketplace looks like.

Dave Sanders asked if the retaining wall is part of the first phase.

Mr. Jones stated that the whole front part of the lot would be done first and then the rest. He is building the first three individually to see how things go and if everything goes as planned, then he will build the last three simultaneously. He retained counsel and met with Rocky Mountain Engineering to make sure he is in full compliance with the zoning. He encouraged the Commission to go to the ordinance on on C1 and C2 zoning. It falls under both vacation rental and individual motel rooms. He read part of a letter from his attorney.

“Looks like these nightly rentals fit the definition of a motel in the Lava ordinances which define it as: a building or group of two or more detached, semi-detached or attached buildings containing guest rooms with automobile parking space provided in connection there with and designed and intended to be used primarily for the accommodation of transient automobile travelers and which are rented by the day. This definition shall also include auto cabins, tourist courts, motor courts, motor lodges and similar designations.” Ordinance 1982-2, page 15. He goes on to say that in Section 3 on page 34 states that a motel is an allowed use in a C1 zone and a C2 definition in section 4 on page 36 allow it as well.

The Planning & Zoning Commission reviewed the ordinance.

George Linford asked if it was a Planned Unit Development.

Mr. Jones stated that it is not a Planned Unit Development. He referred to the vacation rental definition on page 22 of the ordinance. He also stated that there are not any setback requirements in a commercial zone.

Katie Smith read a portion of the definition of Planned Unit Development aloud and asked for clarification on whether part of the lot was being sold or just the cabins. She also asked what would guarantee that they would continue to be run as nightly rentals.

Mr. Jones stated that he would be selling the cabins and that the ordinance prohibits any other use. It does not allow for the property to be used any other way. That is the guarantee. They have to have a business license in order to run it. It is not likely that someone would just buy one.

George Linford stated that he is actually selling a business, not property.

Mr. Jones stated that is correct. Each unit is an operating motel room. When he sells it they are going to pay a business price, not square footage cost. It is an income opportunity.

George Linford stated that there is an obligation with the business for someone to be there 24 hours and have signage.

Mr. Jones stated that legally they cannot operate until they have a business license and are compliant with the city. He is obligated to give full disclosure of what's required when they buy from him.

Fred Hinz asked if Mr. Jones is maintaining the property.

Mr. Jones stated that he maintains the property while it is in his ownership. If someone buys the business from him, they buy the responsibility to maintain their property.

George Linford asked if he would have to sell 3 of them in order to sell one lot.

Mr. Jones stated that he will be spreading the development cost over all six. Each one will have its own business license, with his name initially, regardless of which lot it is on.

Dave Sanders read the email from the City's legal counsel because he feels that it should be discussed. It reads as follows:

"I question if this is in conformance with the subdivision ordinance. Also, the building inspector would have to make sure that he complies with all fire and safety codes. In any case, the P & Z should make sure to include within any recommendations to city council that the developer be prohibited from selling the units (a violation of the subdivision ordinance and the zoning ordinance). The city council should also prohibit the same upon final approval and require that a written covenant be recorded with the plat stating that the ownership must remain in one person or entity, and that sales of individual units or properties is prohibited. The recording should prevent a title company issuing title insurance to any potential buyer of the property. Hope this helps."

George Linford stated that Mr. Jones attorney has told him that it does not fall under the subdivision ordinance.

Mr. Jones stated that it is not a Planned Unit Development or a Subdivision. It falls under vacation rental. He understands where legal counsel is coming from since they are not here to hear what they are asking for. He explained that he can take any piece of commercial property and divide it and sell it as a business. He stated that there is nothing in the commercial zoning ordinance that prohibits this. It is not a development and it is not residential. It is a commercial business that is being built.

Dave Sanders stated that legal counsel has indicated that they interpret this as a PUD. He stated that when Mr. Jones spoke to the City Clerk, he said that he planned on selling them individually which they interpret as a Planned Unit Development. He referred back to the email to the city attorney stating, "We want to make sure that he understands that the units cannot be sold individually and that there must be local property management available 24 hours since he lives out of state. Planning & Zoning is not make any decisions, they are only reviewing his plan, but we would like to know how you think we should approach this situation. You can talk to Canda if I am not in the office, she knows the situation well."

Mr. Jones read section A. Vacation Rental (Tourist Home) on page 24 of the zoning ordinance aloud. He stated that this is not a residential zone. He read the area requirements on page 34 aloud. He stated that this is not a single family dwelling, this is a commercial business. He read the regulations for the C-1 Zone. He stated that it is a vacation rental and that it is a motel room. He stated that it is within height requirements and that there are no minimum lot requirements.

Katie Smith stated that they are not disputing the fact that he is in compliance with the commercial zoning, but when he starts splitting them up she is not sure if that throws it into a different category.

George Linford asked what kind of time frame Mr. Jones is looking at. He stated that there is a difference in counsel opinion and feels that they will need to have another meeting. If he is on a time constraint, they could look at setting up a special meeting.

Mr. Jones stated that he thinks that they have enough information here to make a decision but he understands that counsel is being prudent. He stated that he knows that the city's attorney does not want this here.

The Planning & Zoning Commission and Steve Jones discussed the lack of organization and continuity with vacation rentals in town in comparison with Sun Valley.

George Linford told Mr. Jones that this will always have to be a business and it will always have to meet certain requirements which have to be passed on to whoever buys the property from him. He questioned whether it would ever be a private residence.

Katie Smith stated that it cannot be a private residence. She questioned why anyone would even want to buy one for that purpose.

Mr. Jones referred to the permitted uses in the commercial zone. He stated that this is a motel and it meets all of the zoning requirements.

Dave Sanders reviewed the definition of PUD.

Katie Smith stated that she thinks they should talk to the city's attorney.

Dave Sanders stated that he views this as a broad definition and that Mr. Jones has complied with the commercial zoning requirements and is in compliance with the requirements of the city. He is enthusiastic about what Mr. Jones is doing and thinks he should proceed.

Mr. Jones stated that if a motion is made to approve, the City Council typically follows the recommendation of Planning & Zoning. He feels that there is some vulnerability on the part of the commission but he has presented specific plans for a business which is a motel.

George Linford stated that he feels that Mr. Jones has addressed most of the concerns but there is still the question of keeping ownership in one person or entity.

Mr. Jones stated that when you own a piece property that you take Fee Simple Title to and you have an improved structure on it and it's in his name, it remains in his name until someone buys it. He stated that he appreciates where the commission is coming from and still requests their recommendation to City Council. He stated that Ted Booth will be presenting at the next City Council meeting if this is approved.

Dave Sanders stated that he feels Mr. Jones has covered his ground and if the City wants to take issue with it, they can. He made a motion to approve Mr. Jones' preliminary designs and recommend City Council approval.

Katie Smith stated that she is uncomfortable recommending this to City Council without knowing more about PUD and Subdivision. She agrees that it complies with the commercial zoning.

Dave Sanders stated that it is there job to make sure that it complies with zoning and as far as he's concerned it has met those requirements.

Katie Smith suggested adding to the motion,"based on the fact that his plans meet commercial zoning requirements."

Dave Sanders made a motion to approve the preliminary plat for the development of Elm Street Nightly Rental Cottages based on the fact that it is compliant with all of the requirements of the commercial zoning ordinance and he can proceed on the basis of getting approval from City Council. Fred Hinz seconded the motion. All voted aye, unanimous.

Mr. Jones stated that he appreciates their vote. He is ambitious about Lava's future and contributing to its prosperity.

Other Business

None.

Schedule Next Meeting

The next Regular Meeting is scheduled for April 25, 2013 at 6:30 p.m.

Adjournment

Fred Hinz made a motion to adjourn. Dave Sanders seconded the motion. All voted aye, unanimous. Meeting adjourned at 7:45 p.m.

Allison Hinz – Secretary

George Linford - Chairman

