

## MINUTES

### CARBONDALE PLANNING AND ZONING COMMISSION

Thursday January 10, 2019

#### **Commissioners Present:**

Michael Durant, Chair  
Ken Harrington, Vice-Chair  
Jeff Davlyn  
Jade Wimberley  
Nicholas DiFrank (1<sup>st</sup> Alternate)

#### **Staff Present:**

Janet Buck, Planning Director  
John Leybourne, Planner  
Mary Sikes, Planning Assistant

#### **Commissioners Absent:**

Nick Miscione  
Marina Skiles  
Jay Engstrom  
Tristan Francis (2<sup>nd</sup> Alternate)

#### **Other Persons Present**

Chris Beebe, 1149 Vitos Way  
Jarod and Sharon Samuelson, 4208 County Road 100  
Josh Davis, 615 Buggy Circle

The meeting was called to order at 7:00 p.m. by Michael Durant.

#### **December 6, 2018 Minutes:**

Ken made a motion to approve the December 6, 2018 minutes. Jade seconded the motion and they were approved unanimously with Jeff abstaining.

#### **Public Comment – Persons Present Not on the Agenda**

Chris Beebe, 1149 Vitos Way said he is an architect and he designing a home in the OTR, he commented on the following UDC amendments;

- Alley step back, the current code is ambiguous. Apply side setback in OTR for the step back for the alley.
- UDC 3.72. – The impervious table shows percentages and mentions sentence; *Lot coverage in each zone district shall not exceed the percentages shown in Table 3.7-2 below. Further, maximum lot coverage in any category shall not exceed the amount of lot coverage allowed in the next higher category.*

Chris stated that the crazy wording for a lot went from 60% to 34% impervious lot coverage. He suggested doing away with the text. He said that going from 60% to 40% is enough of a change from the old code. He said that the other thing that this does is that we are counting drivable surfaces.

- Pervious pavers are notching up the cost of building in Carbondale for the record and that there is not a standard for the pavers. He said that he has researched and that there is not anything to hang your hat on.

**Resolution 1, Series of 2019, approving an ADU at 275 S. 4<sup>th</sup> Street (Revised)**

Ken made a motion to approve Resolution 1, Series of 2019. Jeff seconded the motion and it was approved unanimously.

Jade commented that the covenants are still filed with the State regarding this ADU approval for 17 Maroon Place and that could be a concern. She said that she wasn't sure if this was a P&Z issue.

Janet agreed with Jade and she said that they are agreements between private property owners. She said that she always tells applicants that they are doing this at their own risk because other owners could contact a lawyer.

Michael stated that we did talk about this at the previous meeting and it was determined that it was not our role to enforce the covenants.

Janet added that we do not enforce covenants unless the covenants state that it is enforceable by the Town.

**Resolution 2, Series of 2019, approving an ADU at 17 Maroon Place**

Ken made a motion to approve Resolution 2, Series of 2019. Jade seconded the motion and it was approved unanimously.

**Public Hearing – Minor Site Plan Review, Special Use Permit and Variances - 159 Sopris Avenue- Applicants Sharon and Jarod Samuelson**

Janet stated that this is a public hearing to consider a Special Use Permit and a Minor Site Plan Review to renovate the abandoned CMU structure that was built in 1946. She said that it was the original residence on this Lot. She said that sometime in the 1970's it burned and that it has remained as is since then. She said that the applicants would like to convert the CMU structure into a two bedroom single family dwelling. Janet stated that the property is located in the R/HD zone district and that a special use permit is required to allow two single family residential units on one Lot. She said that the proposal meets all of the zoning requirements of building height, pervious coverage, and the parking requirements. She said that four parking spaces are required and that they are providing five. She said that the only place that it deviates from the zoning is the variances because of the pre-existing location of the building within the front and side yard setbacks. Janet said that she debated whether variances were necessary because these are pre-existing walls, which were built prior to zoning code adoption. She said she realized that when the roof was added that it would increase the non-conformity. She said that this application was noticed as two variances. She said the existing structure extends .2 feet onto the neighboring property to the east. She said that this is usually an issue between the two property owners but that a resolution was needed due to the need of entering the neighbor's property to maintain this structure. Janet stated that it was also increasing the encroachment onto the neighboring property. She said that after speaking to the Town Attorney it was decided that continuing the public hearing would be the best avenue to work through some of these

issues. She said that overall she is in favor of the application and that it would provide a nice single family residence near the downtown. She said that this structure has been an eye sore ever since she moved here and that she would love to see it reused. She said that she is recommending a continuance. She stated that for the record we did get a letter from Ellen Sassano and Jeff Maus, a neighbor at 315 S. 2<sup>nd</sup> Street and that they were in favor of this application.

Ken asked if there was a plat showing the encroachment.

Janet passed a large plat to the Commission for review.

Further discussion ensued regarding the encroachment shown on the plat and creative ideas for resolution.

The applicant, Jarod, stated that the house has been there since 1946 and that there hasn't been anyone asking them to get the existing structure off their land. He said that they are hoping to build on it and get it back to a livable structure and that is why we are deciding to go this direction. He said that they had thought about removing the structure or leaving it as is if they can't build on it. Jarod asked if they removed the wall on the other property would that change the scope of the building permit from a remodel.

Janet suggested that it would be an amendment to the plan with drawings reflecting bringing the wall in and reducing construction on the neighboring property. She said that the meeting should be continued while requesting additional information to eliminate or reduce the encroachment.

Sharon said that the wall was in the neighbors' parking area next to a tree. She said that there isn't anyone walking right there and that it has been a non-issue until now.

Jarod said that they do not know any of the owners next door but that they have met some renters. He said that they do share a Town easement in the back where a fence has been removed by someone.

Ken asked if there were overhangs on the structure shown on the drawing and how far over they were.

Jarod said that the original roof was on the blocks of the wall, capped with mortar and that the roof lines were actually inside the CMU so they were not overhanging. He said that he understands that the overhang is not acceptable because we are already overhanging.

Michael said it looked like this structure had some cleanup done in recent years.

Sharon and Jarod stated that they had done some asbestos mitigation.

Nicholas said that he would love to see their project completed but that it is our job to protect our community and the legal ramifications.

Jarod said that they have three children and if they are going to want to live in the valley that they are going to need some assistance and that this is an investment for the future.

Nicholas stated that he has two recommendations, one would be moving the wall and the other would be a design plan for the façade.

Jarod said that they wanted to get some direction from this group before they hired an architect.

Janet said that the applicants had an idea or concept of moving the inside wall so nothing would change on the neighbor's property by creating a new wall within the existing structure.

Jarod clarified that they would move the wall.

There was no public present.

Ken said that he was reluctant to vote for this with an intrusion on the neighboring property. He said that you are going to have to move the property line or move the wall.

Michael stated that another option would be to create an easement between the two parties. He said that he would be in favor of however the two neighbors figured out a resolution and that he wouldn't want to tell them how that would be done.

Jarod asked if the Town had a survey to show something different.

Nicholas noted that their ILC was not stamped by Sopris Engineering.

Ken said that he had some concerns with the front yard setback, as they are for safety of people. He said that he would like to know where the doors and access will be.

Nicholas stated that he has no problem with the structure being toward the street. He said that it looks like there is a lot of public right-of-way space in front of the structure.

Jade asked when the applicant knew that part of the building was on the neighbor's property.

Jarod stated that he probably didn't know until they had done the mitigation.

Michael stated that he would like to see a site plan showing the egress and the right-of-way.

Sharon stated that they bought their home from a fifth generation family and that they trusted this property owner and that this problem wasn't a red flag.

Michael stated that the Commission is just looking for a resolution however that looks.

Further discussion ensued regarding easements and encroachments.

### **Motion to Continue the Public Hearing**

Ken made a motion to continue the public hearing to February 14, 2019. Nicholas seconded the motion and it was approved unanimously.

### **Public Hearing – Medical Marijuana Cultivation – Special Use Permit – P & C Express/Durango Alternatives - 615 Buggy Circle**

John Leybourne outlined the following and stated that these are two separate public hearings with two special use permits but that they are located in the same location.

Rocky Mountain High DBA P & C Express and Durango Alternative have submitted two license applications (one for each operation) to add an additional two medical marijuana cultivation licenses to the 615 Buggy Circle location. These applications would be in addition to the one retail cultivation on site and one medical cultivation at the same address.

The applicants have stated that no additional plants would be added to the facility as the existing operations would reduce the amount of plants to accommodate the two new operations.

This application was originally submitted on February 9, 2018 and was scheduled for a noticed public hearing on April 12, 2018. Due to ongoing odor issues the two applications were continued until the odor issues could be resolved by way of an issued notice of violation and at the applicant's request.

The applicant took steps to control the odor by chinking the exterior of the building and also working on establishing more negative pressure inside the building to eliminate the odor. Upon a re-inspection, Staff determined that the steps taken were adequate. Staff and the applicant then re-noticed the application for the meeting this evening.

John noted that the State requirement of providing medical marijuana from an associated grow to a medical dispensary would be going away on 7-1-2019 as a bill was recently passed to eliminate this requirement.

John stated that there was an error with the recommendations in the packet, which went before the Board previously. He said that it should read "move to approve", not "recommend" as the Commission is the approving body.

### **DISCUSSION**

As the two licenses are being added to an existing facility the distancing requirements from schools and such have been met and confirmed.

The Town may impose conditions it feels necessary to ensure that a proposed special use meets the purposes in the zoning code and to protect the public health, safety and general welfare of the Town and surrounding neighborhood. The Town has broad authority to deny a special use if it determines a proposed use is incompatible with the neighborhood.

Michael asked for clarification that they are growing marijuana for recreational and medical but because of the way the law is structured and for the requirement of vertical integration is the reason why we are reviewing this again. He asked if anything else changes besides the regulatory structure.

John said no just the structure changes as well as the mitigation of odor, which was completed in order for them to continue their operations.

Josh Davis, 615 Buggy Circle stated that he is representing the owner and that they have to meet all of the State requirements such as vertical integration with licenses. He said that starting July 1, 2019 that some of these requirements will lighten up and that we won't have to do this but for the next six months we need to follow the requirements.

Josh stated that the building should have been renovated regardless because it was old. He said that the owner realizes this and that he should have done this to begin with. He said that they are continuing to renovate the inside of the building so that they will never be the issue on Buggy Circle. He said that to be honest whichever direction you enter Buggy Circle you can smell marijuana. He stated that compliance is their number one concern and that is what his company has been hired to do. He said that he is a third party company that deals with compliance issues for the State of Colorado.

Nicholas asked what happens on July 1 as well as its implications.

Josh stated that before January 1, 2019 that they were under the 70/30 rule and that 70% of all of our medical marijuana had to be grown by our facility. He said that as of January 1, 2019 that the limit is now 50% but that it has to be associated with that specific store. He said that starting in July they will be able to wholesale to all of Colorado just like the recreational side. He said that another bill could be passed to change this but for now we are preparing for these changes.

There was no public to speak for either application but Wendy spoke as the Director of Rocky Mountain High and stated that they are trying to stay ahead of the game in terms of legal issues.

### **Motion to Close Public Hearing – P&C Express**

A motion was made by Ken to close the public hearing. Jeff seconded the motion and it was approved unanimously.

### **Motion to Close Public Hearing – Durango Alternatives**

A motion was made by Jeff to close the public hearing. Nicholas seconded the motion and it was approved unanimously.

### **Motion – Special Use Permit/P&C Express**

Jeff made a motion to approve a Special Use Permit for the operation of a medical cultivation operation to be located at 615 Buggy Circle with conditions 1-9 with the recommended Staff findings. Nicholas seconded the motion and it was approved unanimously.

### **Motion – Special Use Permit/Durango Alternatives**

Jeff made a motion to approve a Special Use Permit for the operation of a medical cultivation operation to be located at 615 Buggy Circle with conditions 1-9 with the recommended Staff findings. Nicholas seconded the motion and it was approved unanimously.

### **UDC Modeling Redlines Follow-up Discussion**

- Height in R/HD
- Minimum Lot area per dwelling area
- Impervious definition
- Landscape definition, expand
- Pedestrian circulation

The P&Z said they agree with all of Clarion's recommendations presented on 12-6-18 and directed Staff to redline the UDC accordingly. They asked that they be included in the existing UDC.

### **Election of Chair/Vice Chair**

A motion was made by Jeff to reappoint Michael Durant as Chair and Ken Harrington as Vice-Chair. Nicholas seconded the motion and they were approved unanimously.

### **Staff Update**

Janet stated that she would be working on clarifying the code regarding definitions of an operational business and sign permits as well as the timing of their issuance with the Town Attorney. She asked that the Commission make a motion to initiate a zone text amendment.

### **Motion – Zone Text Amendment**

Ken made a motion to initiate a zone text amendment. Jeff seconded the motion and it was approved unanimously.

**Commissioner Comments**

There were no comments from the Commissioners.

**Motion to Adjourn**

A motion was made by Jeff to adjourn. Nicholas seconded the motion and the meeting was adjourned at 9:06 p.m.