

ZONING AND PLANNING BOARD MEETING MINUTES

January 19, 2023, Zoning & Planning Board meeting was called to order at 7:00PM at City Hall at 206 Main Street, Three Forks, MT 59752, and via Zoom (Zoom is a virtual meeting tool being used due to COVID-19 and social distancing guidelines).

Members George Chancellor, Kelly Smith, Amy Laban, Matt Jones, were present at City Hall. Niki Griffis attended via Zoom. City Planner Randy Carpenter and City Attorney Susan Swimley were also at City Hall.

Public Present: Emma, Valerie and Ricky Lamb, Rick Orizotti, LaVonne and D.K. Brooks, Meghan Gayle, Mike and Gloria Howland, Carole Fandrich, Mayor Randy Johnston, Sgt. Desmond Doonan, Brent Miller were all present at City Hall.

Chairman Chancellor reminded everyone the meeting was being recorded.

PUBLIC COMMENT (items not on the agenda): There were no public comments on items not on the agenda.

CONSENT AGENDA

Minutes from the meetings held on 11/17/2022

Kelly Smith moved to approve the minutes from November 17th, 2022. Amy Laban seconded the motion.

Motion Passed 5:0.

NEW BUSINESS

Chairperson and Vice Chairperson appointments per bylaws.

Kelly Smith nominated George for Chair and Matt for Vice chair. Amy Laban seconded.

Motion Passed 5:0.

PUBLIC HEARINGS

Public Hearing and Recommendation on an Amendment to an approved Conditional Use Permit Requested by A & L Investments, LLC, seeking approval of a work-live development on the property located at Lot 4-A-1, Block 12 of Headwaters Addition, Commonly Known as 95787 MT-Hwy 2/Frontage Road which contains conditionally approved RV Campgrounds, service building and Three Forks Market. This application requests use of a work-live development a 1-bedroom apartment within the service building above the RV Campground restrooms with second floor access stairs and a 10' x 12' exterior deck on the southeasterly side, with designated parking spaces

City Attorney Susan Swimley spoke regarding her email and memo regarding her opinion on George Chancellor being able to be impartial on this application.

Rick Orizotti, applicant's representative, stated that, "Chairman Chancellor's past conduct at the 11/17/2022 Zoning meeting and response to questions I asked him at the 1/10/2023 Council meeting, make it clear to me that there is an appearance of impropriety that he cannot sit as a fair and impartial arbitrator with respect to this issue. This is part of the same amendment that was heard at those meetings, but was bifurcated with

ZONING AND PLANNING BOARD MEETING MINUTES

respect to the awning and firepit; Now we're back because Susan Swimley and I agreed the two issues should be separated. I think for the record Mr. Chairman's past conduct cannot, regardless of what he says now, wipe away the appearance of impropriety nor can he be fair and impartial. I point out that the 11/17 minutes are replete with comments made by Mr. Chancellor that show, and prove, he has a bias. He also presented at that meeting a litany, going back to June of 2020, of assumed violations. I respectfully request this board address the issue that Mr. Chairperson can sit as a fair and impartial person in reviewing the amendment presented, when in fact at the City Council he recused himself (different parts of the same application to amend) but said he would vote for the firepit and awning but not for the apartment. In my opinion, he cannot be fair and impartial."

Rick Lamb, owner of Three Forks Market, stated, "My contractor that built the building said that if we were going to do changes that it was easier to do during construction so go talk to the City and apply for the changes and go through the approval process. So, I called a zoning member (George) and the Zoning official (Kelly) to show them what we wanted to do and George flat out said this would be denied because you put it in place without permission."

George Chancellor began to explain his perspective. Susan Swimley interrupted saying the issue is not what the previous discussions have been. The issue is [to George Chancellor]: Can you put aside your previous comments and enforcement concerns, and decide on this application? George Chancellor replied, "I can."

Rick Orizotti stated that he still disagreed with that statement.

City Planner Randy Carpenter read his staff report. He directed the Board to Susan Swimley's memo recommending an additional four conditions, and her email recommending a fifth condition.

Mrs. Swimley read those and said the board may take or leave them:

1. Separate water meter and shut off valve be installed for the apartment.
2. The remaining areas of the service building remain that they are only to be used for personal storage. (See Susan Swimley's email for full details, however this condition also states that the applicant shall remove the commercial kitchen area previously installed on the main floor of the service building by jack hammer removal of the concrete floor and removal of no less than three feet of the subsurface water pipes and sewer pipes...)
3. All statements of mitigation and explanations of use presented in this and the previous applications are made conditions of this approval.
4. The apartment shall be subject to year around same quiet time hours as the RV campground, being 10pm to 8:30am daily. (Susan stated she could not find record of the exact quiet time and believed it to be 10pm; Valerie Lamb said they begin at 10:30pm.)
5. The applicant shall file a deed restriction in favor of the City of Three Forks which precludes the CUP property from being divided or subdivided utilizing the Montana Unit Ownership Act (condominium act).

Crystal Turner informed the board that Nikki Griffis said she cannot hear any of the discussion due to microphone issues and has disconnected. She said in an email, "Sorry I can't hear and won't be able to make a fair decision." (There is still a quorum of the Zoning & Planning Board.)

ZONING AND PLANNING BOARD MEETING MINUTES

Applicant Presentation: Rick Orizotti, who did most of the speaking on behalf of the applicants then introduced Brent Miller, the engineer for the project. Brent Miller said this application seeks to add the apartment as a conditioned use. "Once work/live was added to the NHB zoning, the apartment was presented in the service building. Its access is by exterior stairs facing the store, so not visible to the street or anyone driving by. We already proposed to have a separate meter for the apartment that would be located in the mechanical room. There is not a problem with the existing lines servicing the apartment for pressure. There are no proposed improvements in the floodplain; the floodplain is in the green line so all amendments are outside the floodplain. The proposal of jackhammering the floor in Susan's conditions would not be a good thing to do because it holds the foundation up. I am available for questions." Rick Orizotti informed the board that the apartment is not fully complete. It has to be accessed by outside stairs on the second floor and the stairs are not built yet. "It has never been used as an apartment or for anything," he told the Board. "In response to Susan's additional conditions: water meter in the apartment and separate shut off we agree with this condition. Regarding the storage building being personal use, we do intend to install a utility sink which would be used to clean up equipment (picnic tables, lawn mower, etc). The building is only used for personal storage for the owners of their equipment and such. We agree with condition #3. Condition #4 I can't site exactly but we always thought the quiet hours were 10:30pm to 8am. (Crystal Turner looked up previous records to verify this time and it should be 10:30pm to match the previous condition.)"

Board Comments/Questions: Matt Jones verified with Mr. Orizotti, "So you don't object to anything Susan has suggested as a condition, other than in #2 for the removal of the concrete?" Rick Orizotti said yes. "Other than the method of eliminating the reference to commercial kitchen and any plumbing associated to it by jackhammering and pouring concrete down any pipes, we agree to her suggested conditions."

Kelly Smith said, "Isn't there utility sinks in the original men/women bathrooms? They were on the original 20-unit [site] plan with the bathrooms." Rick Lamb stated there is currently no utility sink.

Public Comment: Lavonne Brooks spoke in opposition. D.K. Brookes is also opposed. Mike Howland is opposed and added, "I think you get rid of all elected officials except the mayor, and get rid of zoning and just let it be a free for all if you're not going to enforce these kinds of things, or listen to the public." Gloria Howland is opposed. She added it makes her want to violate rules too like parking an RV all summer in the right-of-way and getting 12 chickens. Lavonne Brooks questioned that since the campground was only open for six months, would the work/live only be open for six months? Randy Carpenter spoke that if there was a valid reason to limiting the live portion of Work/Live the Board could discuss that; if the Board could mitigate with conditions that support the apartment as work/live only being open six months, the Board could limit the live portion to six months. Susan Swimley disagreed. Carole Fandrich spoke in support of this application. She said it adds value to the community, but know it is up to the board.

Chairman Chancellor closed public comment.

Applicant Rebuttal: Rick Orizotti spoke regarding the Lambs, "Their fatal flaw is premised that there are violations to the CUP. The building has always been used as permitted. The fact that infrastructure for an apartment was included during construction was certainly at the risk of the owner because, as we are doing now, they need to go through the process to seek approval for use of the apartment different from the use of the building. In light of the work/live ordinance, this fits within the parameters of that zoning. It will never be

ZONING AND PLANNING BOARD MEETING MINUTES

used unless approval from this body and the City Council is obtained. The opponents of this application have also assumed there is a commercial kitchen in there –there is not. There is lighting which is reasonable to use the building. There will not be a commercial kitchen installed unless approval is provided by this board and the Council. There is a 3-foot x 3-foot area for a utility sink.”

Board Questions/Comments: Matt Jones stated, “Taking out the past regressions, this application meets the conditions, and as far as paving isn’t that in the ordinances? The applicant does not object to any of the conditions other than how to tear out the plumbing. I thought it was excessive but they agree to another method. I was wondering about a commercial kitchen, but the applicants have said there is nothing there. Susan Swimley said having been inside the building, there is not a kitchen. If I personally look at this as a recommending board, not a judge and jury, I see no reason to object to their application, as long as they are good with these conditions and no one has any more to add.” Amy Laban told the opposing public the board is not here to debate the “he said/she said”. “We would be in more hot water all the time if we did that. Our job it to be consistent with conditions, and determine if applications meeting what the zoning regulations require. We have set precedent for in the past with specific conditions for similar applications. I don’t want to start dolling out decisions based on things people hear around town or things people do or don’t like about each other. That’s not why I am here. I do not see an apartment above a storage building as breaking any code or regulations, nor do I see it as a nuisance to the neighbors, especially given the size of the apartment.” Kelly Smith replied to Matt’s question, clarifying that the zoning ordinance does require paving for anything other than single family residential, and this board has made paving a condition in the past. She suggested the Board remain consistent. Matt asked if the Board had to make paving a condition then. Susan Swimley said no, and Randy Carpenter shook his head no, both meaning because it is required in the ordinances. Same goes with the impact fees: ordinances require it so it does not need to be a condition on the record.

Matt Jones moved to approve the request by the Lamb’s, A&L Investments, that we include the three recommendations by the City Planner (list A, B, C) and the conditions by Susan Swimley #1, #2 should be read the “areas inside...and this apartment, shall remain and be used for personal storage of the land owner at all times..., #3 as written, #4 change the quiet time to begin at 10:30, and #5 to read, “The applicant shall file a deed restriction in favor of the City of Three Forks which precludes the CUP property from being divided or subdivided utilizing the Montana Unit Ownership Act (condominium act). Amy Laban seconded the motion.

Motion passed 4:0.

Public Hearing and Recommendation on a Request to Define “Meeting Hall” in Title 11

Kelly Smith informed the board that “Meeting and Lodge Halls” are referenced in 11-8A Central Business District, yet the Zoning ordinance does not have a definition. “Since meeting and lodge halls were put in the ordinance in 1980, things have changed. A definition might be helpful down the road,” she said. Proposed definition:

11-2-2: DEFINITIONS:

MEETING HALL: A building or part of a building used for the assembly of persons for singular events such as conferences, religious functions, catered occasions, special events, club meetings, music venue, philanthropic purposes, and other such activities.”

ZONING AND PLANNING BOARD MEETING MINUTES

Public Comment: There was no public comment.

Board Questions/Discussion: Randy Carpenter asked if the board wants him to come up with a definition? He preferred this be continued so he has time to look at other communities' definitions before going with what has been presented tonight.

George Chancellor moved to continue this until February so our staff can search more information.

Kelly Smith seconded.

Motion passed 4:0.

OLD BUSINESS

There was no Old Business.

Kelly Smith said there is one person filling out an application for a CUP but has not submitted it yet. They have until next Friday (1/27/23) to submit in order for us to have a February meeting.

Reminder that next week is the joint Zoning /Council meeting. Matt Jones said he can now attend because he has rearranged his work schedule.

Randy Carpenter said there will be one more meeting on the Ad Hoc Committee tasked to provide guidelines on the rewrite for the residential zoning ordinance. Kelly Smith thought the draft would go to the Council's Ordinance Committee first, then rewrite, then hold the Zoning & Planning presentation. Randy proposed it go to Zoning & Planning happen at the February meeting if there is no application so that the board can take time to review the guidelines determined in depth first.

Kelly Smith moved to adjourn. Matt Jones seconded the motion.

Motion Passed Unanimously.

Meeting was adjourned at 7:42PM.