

Valley County Planning & Zoning Commission

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Bryan Cooley, Chairman
Scott Freeman, Vice-Chair

Ed Allen, Commissioner
Ray Cooper, Commissioner
Johanna Defoort, Commissioner

MINUTES

Valley County Planning and Zoning Commission

July 11, 2019

Valley County Court House - Cascade, Idaho

PUBLIC HEARING - 6:00 p.m.

A. OPEN: Meeting called to order at 6:00 p.m. Quorum exists.

P&Z Administrator – Cynda Herrick:	Present
P&Z Commissioner – Ed Allen:	Present
P&Z Commissioner – Bryan Cooley:	Excused
P&Z Commissioner – Ray Cooper:	Present
P&Z Commissioner – Johanna Defoort:	Present
P&Z Commissioner – Scott Freeman:	Present
P&Z Technician – Lori Hunter:	Present

B. MINUTES: Two changes are needed: the date at the footer should be 6/13/2019 and on page 6 it should be Commissioner Cooper not Cooley that seconded the motion. Commissioner Defoort moved to approve the minutes of June 13, 2019 with the corrections. Commissioner Cooper seconded the motion. Motion carried unanimously.

C. OLD BUSINESS:

1. C.U.P. 17-04 Blackhawk on the River Event Venue – Annual Review: The Planning and Zoning Commission will review whether or not activities have been in compliance with the approved permit. *Action Item.* [Not a public hearing.]

Vice Chairman Freeman introduced the item and asked if there was any *ex parte* contact or conflict of interest. There was none.

Vice Chairman Freeman asked for the Staff Report. Staff presented the staff report. No information or complaints have been received.

Brian Dickens, 1067 Arlington Drive, Eagle, ID, is the manager for Blackhawk Gold which owns the River Lodge. His office will provide a schedule for 2019.

The previously withdrawn application to expand uses received much resistance. The recent HOA meeting was a positive meeting. Committees have been organized to decide how the Lodge will be operated. Previously everything was met with resistance. Mr. Dickens has taken control of the HOA, which the developer has the power to do so via recorded documents. It was agreed that expenses for the Lodge will be shared between the developer and property owners. The Homeowners Association will likely be reapplying for an expansion of the existing conditional use permit. He would like ability to have third parties provide services at the Lodge, such as yoga, massage, dance, etc. This use will both benefit homeowners and bring in income to support the Lodge.

Mr. Dickens said he would send a schedule as requested by Commissioner Defoort.

There was discussion on whether annual reviews will be continued in future years. The reviews are not required by C.U.P. Things appear to be going smoothly. Review will be held in the future if needed.

D. NEW BUSINESS:

[06:12:22 PM \(00:13:11\)](#)

- 1. C.U.P. 18-10 Garcia/Fredriks Multiple Residence – Extension:** Ruben Garcia and Sharon Fredriks are requesting a two-year extension of the conditional use permit approved in July 2018 allowing two residences on one parcel. More time is needed for financing and construction. The 30-acre parcel, addressed at 161 East Lake Fork Road, is in the NENE Section 11, T.17N, R.3E, Boise Meridian, Valley County, Idaho. *Action Item*

Vice Chairman Freeman introduced the item. Vice Chairman Freeman asked if there was any *ex parte* contact or conflict of interest. There was none.

Vice Chairman Freeman asked for the Staff Report. Staff presented the staff report and summarized the following exhibits:

- **Exhibit 1** – Extension request letter [not included in staff report.
- **Exhibit 2** – Letter from David and Cathy Mosman, 155 E Lake Fork, received July 9, 2019. They are not opposed to an extension on a second residence; however, it appears that a new residence would be a fourth residence. There is a single-wide manufactured home, an RV trailer lived in full time for three years, and a small building that has been lived in for approximately 1 ½ years. Ordinances need to be enforced.
- **Exhibit 3** – Pictures (3) from Valley County Assessor records of house, RV, and shed.

Commission Defoort asked for clarification about living in a RV year-round. Idaho State Statutes say people may not live in them year round; however, a limit of days allowed is not specified. Valley County Code allows one RV on site.

Vice Chairman Freeman asked for the applicant's presentation.

Ruben Garcia, 161 East Lake Fork Road, said there is a building permit for the shed which includes an exercise room. The RV use is temporary. He originally thought the financing would

be easy but was mistaken; a larger down payment is needed. Other people/parcels do use the same entrance/parking area along East Lake Fork Road. He agrees that backing out of their driveway would be dangerous. He does not understand why people have complained about their building on this property.

In response to questions from Commissioner Allen, Mr. Garcia replied that they are only living in the manufactured home. The shed is not being used as a residence but as storage and an exercise space; there is a stove for heating in the exercise room. The RV is used as temporary, occasional use by guests. In response to Commissioner Defoort, Mr. Garcia said they are not renting anything out to other people.

Commissioner Cooper asked if the manufactured home will remain after the additional home is built. Mr. Garcia is unsure; it may be used for guests.

Sharon Fredriks, 161 East Lake Fork Road, said that they are going through the conditional use process instead of fighting the fact they bought this property after being told by the realtor it was actually three buildable parcels instead of one.

Commissioner Defoort said there are already multiple residences according to multiple sources. Sharon replied that there is one home, one shed, one pump house, and one RV. The mobile home is the residence on the property. The shed was permitted and approved by the Building Department. A site visit is welcome as they have nothing to hide.

Vice Chairman Freeman asked for proponents. There were none.

Vice Chairman Freeman asked for undecided. There were none.

Vice Chairman Freeman asked for opponents. There were none.

Vice Chairman Freeman closed the public hearing.

The Commission deliberated. They are asking for a two-year extension due to lack of financing. Commissioner Cooper is willing to approve an extension. Commissioner Allen doesn't want to discount the complaints; perhaps a site visit is warranted. Commissioner Defoort finds it odd that three different comments have been received with complaints; otherwise, an extension for financing seems reasonable. Staff stated that a site visit is possible. Extended family is living in this site; building the second home will spread them and their vehicles onto two sites in the 30 acres.

COA – Allow a site visit by Staff to verify there is only one residence in use.

Commissioner Allen moved to approve the extension of C.U.P. 18-10 Garcia/Fredriks Multiple Residence – Extension as requested, contingent upon Staff review. Commissioner Cooper seconded the motion. Motion carried unanimously.

Vice Chairman Freeman explained the ten day appeal period.

[06:41:42 PM \(00:42:31\)](#)

2. C.U.P. 19-16 Colson Multiple Residence: Laura Colson is requesting a conditional use permit for two residences on one parcel. The homes would share a driveway and well. A new septic system would be installed. The existing home is addressed at 13290 Farm to Market Road. The 19-acre parcel is in the SWNW Section 1, T.16N, R.3E, Boise Meridian, Valley County, Idaho. *Action Item*

Vice Chairman Freeman introduced the item. Vice Chairman Freeman asked if there was any *ex parte* contact or conflict of interest. There was none.

Vice Chairman Freeman asked for the Staff Report. Staff presented the staff report.

Vice Chairman Freeman asked for the applicant's presentation.

Sherry Maupin is representing the applicant. Laura Colson, 13290 Farm to Market Road, is also present. There are no plans to subdivide the property. Septic permit has been received. The proposed house will be moved from the proposed location on the existing site plan to a location closer to the barn. The current and new house will share well, septic, and propane gas. The closest neighbor is hidden by trees. Ms. Colson has spoken to the neighbors who had no concerns. The house will blend in architecturally with the current buildings. Access road width is about 10 feet of well-maintained driveway. It is a shared driveway with the neighbor. There is a large turn-around by the home for use by fire trucks.

Vice Chairman Freeman asked for proponents. There were none.
Vice Chairman Freeman asked for undecided. There were none.
Vice Chairman Freeman asked for opponents. There were none.
Vice Chairman Freeman closed the public hearing.

The Commission deliberated. Due diligence has been done.

COA – A letter of approval shall be obtained from the Donnelly Rural Fire Department prior to issuance of the building permit.

Commissioner Defoort moved to approve C.U.P. 19-16 with the additional conditional of approval; Commissioner Allen seconded the motion. Motion carried unanimously.

1. C.U.P. 19-17 Bitton Multiple Residence: Jeffrey & Debra Bitton are requesting a conditional use permit for two residences and living quarters above a garage on one parcel. The homes would share a driveway. There would be individual septic and wells. The 25-acre site is addressed at 13708 Highway 55 and located in the NE ¼ Section 15, T.17N, R.3E, Boise Meridian, Valley County, Idaho. *Action Item*

Vice Chairman Freeman introduced the item. Vice Chairman Freeman asked if there was any *ex parte* contact or conflict of interest. There was none.

[06:55:30 PM \(00:56:19\)](#)

Vice Chairman Freeman asked for the Staff Report. Staff presented the staff report.

Staff recommended an additional (**COA**): A letter of approval shall be obtained from the Donnelly Rural Fire Department prior to issuance of the building permit.

Vice Chairman Freeman asked for the applicant's presentation.

Deb Bitton, Stanley Idaho, purchased the property fall 2018, originally planning to build one part-time residence. Area housing is extremely tight especially for renters. To help her daughter and son-in-law who live in the area, they decided that having two modular homes on the property is the best solution for the family. The additional ADU apartment would be available for renters and future caregivers. The remainder of the use would be for irrigated pasture. Test holes have been done. An excavation permit was received from P&Z for a pond. There currently are a few RVs on the property.

Vice Chairman Freeman asked for proponents. There were none.

Vice Chairman Freeman asked for uncommitted. There were none.

Vice Chairman Freeman asked for opponents. There were none.

Vice Chairman Freeman closed the public hearing.

The Commission deliberated.

Commissioner Allen moved to approve C.U.P. 19-17 Bitton Multiple Residence with the stated conditions and contingent on the permits being received. Commissioner Defoort seconded the motion. Motion carried unanimously.

Vice Chairman Freeman explained the ten day appeal period.

[07:07:16 PM \(01:08:05\)](#)

E. OTHER:

- **Privy Request – CR 6 Subdivision Lot 56**

Staff received a letter for approval for a portable privy for a new yurt. A septic system would be added when a house is built in the future. The yurt platform requires a building permit. The Commission deliberated and discussed if the privy needed to be screened from neighbors.

COA: Upon request of the neighbors, the applicant will provide screen of the privy and/or relocate the privy.

Commissioner Defoort moved that the privy request is approved with the condition of approval. Commissioner Allen seconded the motion. Motion carried unanimously.

Vice Chairman Freeman explained the ten day appeal period

- **Appeal Of Administrative Decision** that a conditional use permit is required for commercial use of short-term rental located at Payette River Subdivision # 1 Lot 28, 260 Moonridge Drive

Staff explained the administrative decision. The appellant is Wesley Keller.

- Staff received complaints from neighbors that a garage was being rented as an AirBnB short-term rental.
- An Accessor Dwelling Unit (ADU) permit has not been issued for this site. A building permit was received for a remodel of an outbuilding into living space. Staff has not yet seen a copy of this permit.
- Staff's decision is that this is not a residential use since it was not approved as an ADU.
- Valley County ordinance states that an ADU cannot be rented for less than 30 days and that an ADU cannot be used as a commercial or bed and breakfast use without a Conditional Use Permit (C.U.P.).
- Idaho House Bill 216 says that we cannot restrict the rental of residential uses. Staff discussed short-term rental vs short-term marketplace definitions. In this case, Valley County is regulating use of the short-term rental but not prohibiting the rental by a short-term marketplace platform.

The question is, if this site is an ADU. There was discussion of the definition of a residence. This rental includes hot plate, microwave, toilet, sleeping facility, and bathroom. Therefore it does not meet the definition of residence (no kitchen) but is more similar to a hotel room on a single-family residential lot. Staff stated that a conditional use permit is required. Mr. Keller is appealing her decision.

The Commissioners deliberated and discussed previous requests for AirBnb permits. The State of Idaho (House Bill 216) took away the restrictions but not the local government's ability to manage use and safeguard public welfare. Idaho Code 63-1803 states the following:

- "a county or city may implement such reasonable regulations as it deems necessary to safeguard the public health, safety and general welfare in order to protect the integrity of residential neighborhoods in which short-term rentals or vacation rentals operate."
- "A short-term rentalshall be classified as a residential land use for zoning purposes subject to all zoning requirements applicable thereto."
- "a county nor a city can regulate the operation of short-term rental marketplace."

Staff is not saying they can't do a rental but that a conditional use permit is required for the use. Commissioner review allows for mitigation. There was discussion on AirBnb rentals in the County including other locations the appellant mentioned. An additional residence would require either an ADU permit or a conditional use permit for multiple residences, and a kitchen. Conditional Use Permits are not required to rent a house; however, hotels, motels, and bed-and-breakfast sites do require them. Commissioner Allen believes the Commission still has the option of review of these uses. Commissioner Defoort also believes they should be reviewed as

would other commercial uses in which a conditional use permit is required; for example, RV rentals at an existing residence.

Staff read Idaho Code 67-6539.

Wes Keller and Shelly Garriott, 260 Moonridge Drive, spoke as appellants. Staff is requiring a conditional use permit for a residential act. They are renting a room without a kitchen. There are many short-term rentals in Valley County. This decision seems arbitrary because one person complained. Ms. Garriott has information on at least 18 more similar sites in Valley County (some in McCall) that haven't been asked to apply for a permit. The City of McCall said they would not consider this a commercial use. The room is rented to a maximum of three people; however, a nearby three-bedroom house rents to 10 people.

Commissioners discussed other short-term rentals in the County and complaint-driven enforcement. Ms. Garriott said they are being asked to apply for a commercial use and declare the site as commercial. They can't have a commercial use in their neighborhood; therefore, this does prohibit the use. Commissioner Defoort said the use would still be residential use; but would be establishing a commercial operation – they are accepting a fee. There are many commercial businesses that operated with permits in residential areas. Mr. Keller said state law says the use is residential use for zoning purposes. Administrator Herrick stated that Valley County has one zone: Multiple Use that allows agricultural or single-family residence. A conditional use permit does not change the zoning to commercial.

Administrator Herrick stated that any short-term residence rental that is located on the same property as a single-family residence requires a conditional use permit. This is similar to requiring a conditional use permit for a commercial business at someone's house such as Crawford Landscaping at a single-family residence.

Short term rentals cannot be prohibited by State Law. If you are making money, it is a commercial use and you should be paying sales tax.

Staff explained what would happen if they applied for a conditional use: application, public hearing, etc. Impacts to neighborhood are mitigated through conditions of approval. The Commissioners enforce County Code. Mr. Keller is concerned that the Homeowners Association does not allow commercial uses and a conditional use permit would designate the short-term rental as a commercial use. The P&Z Commission does not enforce CCRs.

Commissioner Defoort moved that the Planning and Zoning Commission uphold the Staff's decision that a conditional use permit is required for the rental of the non-residential unit at 260 Moonridge Drive. Commissioner Cooper seconded. The motion carried unanimously.

This decision can be appealed to the Valley County Board of County Commissioners or they can apply for a condition use permit.

E. FACTS AND CONCLUSIONS - Action Items:

- C.U.P. 19-15 Lake Fork Fence Supply

Commissioner Defoort moved to approve the Facts and Conclusions as presented and authorize the chairman to sign. Commissioner Cooper seconded the motion. Motion carried unanimously.

F. WORK SESSION – ORDINANCE REVIEW

- Accessory Dwelling Unit

Staff sent a draft proposal to the Commission; see the changes in red. Parking space requirements have been added. Use of long-term rental property is more than 30 days, not a daily rental. Short term rental (30 days or less) will require a conditional use permit and require proof of compliance with State Tax Commission. Fees may be adopted by resolution of Board of County Commissioners. This allows regulation without prohibiting the use of short-term rentals. The Commissioners agreed to set this for a hearing in September.

- Recreational Vehicle Campground

Staff sent a draft proposal to the Commission. This would be a new section and a new type of permit. It includes a maximum of three RV's per parcel. More RV's would require a conditional use permit. There was discussion on requiring trash pickup. Parcels with only RV's don't pay a waste fee as part of the property taxes; only parcels with structures are required to pay that. Setbacks, parking requirements, ownership, rentals, campfires, quiet hours and lot coverage are addressed. The Commissioners agreed to set this for a hearing in September.

The Commissioners discussed vacation rentals and would like staff to propose an ordinance that regulates them to protect neighborhoods.

Vice Chairman Freeman adjourned the meeting at 8:19 p.m.