



**Planning and Zoning Commission
Meeting Minutes
January 21, 2020**

PRESENT

Jason Cowles, Chair
Stephen Richards
Jesse Gregg
Bill Nutkins
Kyle Hoiland
Charlie Perkins
Matthew Hood

STAFF

April Kroner- Town Planner
Bill Shrum- Assistant to the Town Manager
Jenny Rakow, Town Clerk

ABSENT

Brent McFall
Kyle Hoiland

This meeting was recorded. The following is a condensed version of the proceedings written by Jenny Rakow.

CALL TO ORDER

The regular meeting of the Planning and Zoning Commission held in the Eagle Town Hall was called to order by Commission Chair Jason Cowles at 6:00p.m.

APPROVAL OF MINUTES

Commissioner Perkins indicated there was an error regarding Commissioner Hoiland in the minutes to be corrected. Commissioner Richards made a motion to approve the minutes of the November 5th and December 3rd, 2019 meeting minute. Commissioner Hood seconded. The motion passed.

PUBLIC COMMENT

None.

LAND USE FILES

V19-02 306 Howard Street

Cowles opened file V19-02, a request for a Variance to create four lots with a lot size of less than 6,000 sf in the Residential Medium (RM) Zone District.

STAFF REPORT AND PRESENTATIONS

Applicant Rick Beveridge provided an overview and presentation of the request. Tom Boni provided additional details regarding the request. Applicant has met with the neighbors and provided the vision and plan to be conducive to the neighborhood including single family homes with garages and ADU's. Intent is to preserve the historic home on the property. Concerns regarding development including modular or manufactured homes would be prevented with applicants plan for the property. Minor adjustments to the lots was requested to accommodate the public right of way alley that is under review by the Town's engineer and public works department.

Kroner reviewed the variance request and presented some additional details regarding staff recommendation for denial. Kroner read additional public comments received after packet was published to include in the record. These included letters from Jayne McKinzie in support, Kristin Miller in support and Lily and David Nicholson expressing concerns including too much density and loss of views.

Kroner summarized the development standards and noted the Planning Commission may grant a variance provided it finds both Subsections (A)(1)(a) and (b) of this section and either Subsection (A)(1)(c) or (d) of this section are applicable:

(a) That the variance granted is without substantial detriment to the public good and does not impair the intent and purposes of the Town's regulations, goals, policies and plan, including the specific regulation in question; and

(b) That the variance granted is the minimum necessary to alleviate the hardship; and

(c) That there exists on the property in question exceptional topography, shape, size or other extraordinary and exceptional situation or condition peculiar to the site, existing buildings, or lot configuration such that strict application of the zone district requirements from which the variance is requested would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property in question; OR

(d) That such exceptional situation or condition was not induced by any action of the applicant and is not a general condition throughout the zone district.

With regard to staff findings Kroner presented the staff recommended findings as follows:

Finding (a) Recommendation:

Staff finds that the variance request meets this requirement.

AND Finding (b): That the variance granted is the minimum necessary to alleviate the hardship.

The question before you is: should the reduction in minimum lot area from 6,000 sq. ft, to the lot sizes proposed between 5,000 – 6,000 sq. ft, be viewed as the minimum necessary to alleviate the hardship? Staff views the hardship as a personal hardship, which is not recognized as a valid hardship by the code or the planning community. It is personal, because the property can be developed into six lots instead of seven, all of which would then be able to meet the minimum lot area of 6,000 sf as required by the Town's current ordinance.

Finding (b) Recommendation:

Staff believes this variance request is unnecessary as the land does not present any hardships to prevent compliance with the existing minimum lot area requirement.

AND Finding (c): That there exists on the property in question exceptional topography, shape, size or other extraordinary and exceptional situation or condition peculiar to the site, existing buildings, or lot configuration such that strict application of the zone district requirements from which the variance is requested would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property in question;

OR Finding (d): That such exceptional situation or condition was not induced by any action of the applicant and is not a general condition throughout the zone district.

This property has no exceptional topography, shape or size, or other extraordinary condition that results in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the property owner. The property owner has the ability to create six residential lots, 1 with the existing structure and five new buildable parcels meeting the minimum lot area of 6,000 sq. ft.

In addition, the applicant has self-induced the condition of minimum lot sizes below the Code's 6,000 sq. ft requirement by creating undersized lots. This issue can be alleviated by the applicant if only 6 lots are proposed, allowing conformance with the Code.

Finding (c) Or (d) Recommendation:

Staff does not believe that this request meets the requirements for either Findings (c) or (d).

Q & A

Commissioner Gregg inquired about the land use code update and if it would change the requirements regarding lot size. Kroner provided that it is possible the Town could look at reducing lot sizes to encourage infill development, however she does not know what those would be. The land use code draft may be presented by end of 2020.

Commissioner Nutkins asked about shifting the alley to provide for lot size accommodations. Kroner provided that that discussion will come at time of subdivision proposal and would change the lot sizes minimally.

Commission Chair Cowles noted the code provides for use by right of 1 dwelling per 6000 feet and this is a 1-acre parcel. With respect to the hardship is it because of the alleyway and preservation of the historic home and how does that fit in with encouraging infill.

PUBLIC COMMENT

Commission Chair Cowles opened Public Comment:

Stan Kensinger, 2753 E Haystacker Drive Chairman of the Business Advocacy Council and Land Use Code Committee. The right of way on this parcel has never been used since 1904. It could easily be argued it has been abandoned. This is the normal dilemma for the Town in applying outdated rules. Lot sizes will become smaller over time to encourage infill development. In support of development and redevelopment in the core. We have Broadway revitalization and the advisory committee is tracking economic development activity on Broadway. Every project that can provide 7 additional families that can walk to the core is part of what we are trying to accomplish. This project will build more vitality and economic vitality to increase our sales tax base. This is housing for people who want to live in Eagle. Encouraged the Planning Commission to consider the variance and allow them to move onto subdivision.

Annie Egan, 215 Howard Street stated she agreed with everything Stan said. The alley has been abandoned forever. This project will impact me. This project will allow more control over the design standards and provide nicer looking homes in our neighborhood. Every neighbor is in support of the variance. It will keep pricing down by adding an additional lot. Keeping the historic home is huge and modular and trailers is not what we want in our neighborhood.

David Nicholson, 325 East 4th Street stated this plan will affect us the most. Our backyard looks into the current field. Does applaud keeping the historic home. Feels 7 lots is pushing it for the location and they look stuffed in there. I would be against the variance as you could easily fit 6 lots on the property.

Jessie Horton, 331 Hilltop stated he would be one of the more affected houses. We understand people need places to live here. This will significantly hinder our view. Major concern with height limitations. The Church Street hillside is steep for building. Concerns with the number of people in such a small area, especially with ADU's.

Commission Chair Cowles closed public comment.

DELIBERATION

Commissioner Hood stated we are just looking at the variance and not design standards. Applicant could still put trailers in with a variance. I do understand the intentions. Infill is something I definitely support. I agree that the rules are clear and there has to be a line somewhere. I do not support the variance.

Tom Boni summarized the variance and provided that there are reasonable interpretations that lead to different directions. You don't need to demonstrate a hardship as that is not part of the regulation. History has been to look at hardship as a general concept. Staff has one interpretation. Maintaining the historic home with a larger lot is the impediment. Hardship has been granted for variances and it is not a defined term. Without granting a variance there is a burden on the property.

Rick Beveridge stated the variance is the first step and the second step is voluntarily imposing design guidelines. We still have to go through subdivision. This project is the quality neighbors want to see. Unfortunately, we cannot control the view corridor. This will not be like the duplex Wendy Sacks built. The building height is proposed at 28 feet off first floor. It will not be a three-story home impeding someone's view. It comes to quality and moving forward with infill.

Commission Chair Cowles stated that subdivision would be subject to land use code requirements for building heights and setbacks. They cannot write their own standards. Building heights would be reviewed at building permit unless they are asking for a variance. There is no way to impose design standards. Covenants can be established at subdivision and recorded. This would be managed by applicant and recorded with each property.

Kroner provided that the town's current ordinances do not support infill, it is a matter of lot size. This is 6 or 7 lots and case law does not support this situation as hardship. We look to those cases to see what courts have supported or not supported.

Commissioner Nutkins asked applicant if variance is passed if he was willing to put covenants in to address stricter than what the town requires. Applicant stated that he would have design guidelines. Nutkins asked applicant if the variance is denied what he would do with the property. Applicant provided that he there would be no quality control and may not move there and could sell the lots and the historic house.

Commissioner Perkins stated he was on the side of the applicant for this file. This is exactly what we are looking for downtown. It is a big plus for access to downtown for residents. The sensitivity to architectural style reminds me of Capitol Hill area in Denver. The alley does not concern me. Height restrictions on lots 2, 3 and 4 would be recommended. Our land use code is under rewrite and it once it is done, it would be more favorable to situations like this.

Commissioner Richards stated he is in support of the applicant. Lots and layout can be improved.

Commissioner Gregg stated this is a unique situation and applicant has clearly thought out this whole process and plan for the land. This is a unique historic house and there is enough land to create 7 lots. It is commendable to save the house, as that is part of downtown and our town's history. That means something. That is a hardship or difficulty for this lot to develop to the full potential. I would suggest a limit on the smallest lot to be 5,000 square feet. There are plenty of houses on less than 6,000 square feet, it is not foreign to the town. I support the variance.

Commissioner Nutkins stated he agrees this does not meet the hardship criteria or others. By adding a fourth lot it makes it even harder, however, I do not see anything grossly over and I would approve it. We need to set a minimum for the smallest lot to be 5,250 sf or more. If we go below that size, we should consider eliminating the ADU's. Kroner responded that ADU's are a use by right for single family and is not based upon lot size.

Commission Chair Cowles stated the recommendation from staff cites conditions to approve the variance. First, we must make a positive finding to approve this. It is important to keep that in focus if we are going to approve something. This is a unique situation and I agree with Jesse. We have an infill site with minimal lot sizes with the highest density the area could support. Is this is enough to support 7 residences on it. Is that a hardship. I understand staff's point that the decision to make this 7 lots instead of 6 does not make this a hardship. There is opportunity and it does support our goals and policies. Is there an exceptional condition for the variance? Yes, the existing home and alley do create a hardship, as well as the hill not being easy to build four homes on. This is why we have standards. We heard from neighbors in support and the concerns with building height, which would be there regardless if there were 6 or 7 homes.

Commissioner Hood stated those are my concerns the maximum density is 7 lots; it is not a right to have 7 lots. We don't have the right to approve without a hardship. I don't see the hardship.

Commission Chair Cowles stated the staff recommendation is for denial and I could go either way. Staff looked at case law and I have to take their guidance on that. I want to make sure we are consistent.

MOTION: Commissioner Perkins made a motion to approve File V19-02 for a variance request to allow 7 units on the property with the following standards being met: subsection a) that the variance granted is without substantial detriment to the public good and does not impair the intent and purposes of the Town's regulations, goals, policies and plan, including the specific regulation in question; and b) That the variance granted is the minimum necessary to alleviate the hardship; and (d): That such exceptional situation or condition was not induced by any action of the applicant and is not a general condition throughout the zone district. Commissioner Richards seconded.

Commission Chair Cowles opened for further discussion and requested clarification on the finding for exception situation or condition. Commissioner Perkins stated the historic house is the exceptional condition.

A vote was called: Commissioners Perkins, Richards and Gregg approved, Commissioners Cowles, Hood and Nutkins were against.

Commission Chair Cowles stated the commission can make a motion with different findings for approval, a motion for denial or a motion to continue the hearing.

Commissioner Gregg stated the existing building has historical value and someone else could scrape it away, we should want to keep this historical building within the town. We are deciding on minimum requirements to make this work.

Kroner provided that the applicant has opportunity to request that the alley be vacated. Kroner further stated that staff could not find the hardship and believed that 6 lots accomplishes use without a variance.

Rick Beveridge stated with regard to interpretation of the law, there are no lawyers in the room. Would like to consult his attorney. Expressed that when we first started talking to the town he was encouraged to move forward and directed to come in for a variance before any of the current staff was here. We were not opposed to a PUD then and a PUD would not be in question. The Town has granted PUDs on properties that are less than 5 acres. There is precedence set on smaller than 6,000 square foot lots. We would be okay with lots not less than 5,000 square feet.

Commission Chair Cowles requested a motion to deny or continue. A continuance may allow us to get to a point of understanding with case law and hardship and what other options are available for this site. We would also have opportunity to have additional commission member to remove deadlock.

MOTION: Commissioner Hood motioned to continue File V19-02 until the next planning commission meeting on February 4, 2020. Motion was seconded and passed unanimously.

File SU-1905 422 McIntire Eagle Auto Consignment Special Use Permit

STAFF REPORT AND PRESENTATIONS

Kroner presented this item. The applicant is requesting a special use permit for a vehicular sales establishment (Eagle Auto Consignment) to be located at 422 McIntire Street, at the intersection with Highway 6/Grand Avenue. The business is already an established business in the Town of Eagle at 106 Grand Avenue, and has been at that location since 2010, and had received a special use permit from the Town. The current site of Eagle Auto Consignment was recently approved for a new mixed-use development project, and therefore the applicant is relocating the business to the proposed location temporarily. Ultimately, the applicant intends to move to a final location at 646 Grand Avenue. However, even a temporary establishment of the use does require that a Special Use Permit be obtained; the future use at 646 Grand Avenue will be addressed when that occurs.

Staff recommends approval of SU19-05 Special Use Permit for Eagle Auto Consignment (vehicular sales), with the following conditions:

1. Occupancy of the property for the approved use shall not be permitted prior to the issuance of State of Colorado Licenses for the references uses.
2. The Special Use Permit limits the number of for-sale vehicles on the property to a maximum of 15 at any one time, and such vehicles must be parked in the locations designated on the attached plan.
3. Hours of operation are to be M-F 1:00 pm – 5:00 pm and by appointment, and Saturday 10:00 am – 3:00 pm and by appointment.

4. No servicing of vehicles is permitted to occur on the property.
5. The parking lot must be restriped by December 31, 2020 to better delineate the parking spaces and ADA space for public safety purposes.
6. A building permit shall be required at time of move in if any construction work is intended and/or for a change of occupancy.

Q & A

Commissioner Hood is the shared parking arrangement due to the hours of operation? Is it a problem? Kroner replied that this is their hours of operation and this was included to ensure adequate parking for the hours. From a public standpoint, they need to know the hours of operations for the limit.

Celena Olden provided information that parking on McIntire is being used by private residents and if they changed their operations there would be more parking by the restaurant. We would look to the town to enforce on street parking codes.

Commissioner Hood stated we are looking for less restrictions, we should consider the off-street parking to accommodate the needs at this location.

Commissioner Gregg inquired on how there is adequate parking without knowing the uses of the building as a whole. Kroner provided that the ordinances do not have us do that. This use and the other uses meet their parking needs. Gregg further inquired if the commission should know if it is adequate. Kroner replied that the owner and businesses have assured us that they have enough parking.

Commissioner Hood stated with a multiuse building it would be good to show that there is sufficient parking for all the uses. We do have guidelines for parking per use and if we know the uses then we can put a number to how many are needed and how many they have. Kroner replied that they meet the special use requirements and other parties are in concurrence with that. There is not a parking issue at this site.

Commissioner Perkins inquired if staff is comfortable with snow storage on this parking lot. Kroner stated yes and applicant Trevor Theelke indicated there are options for additional snow storage across the street.

Trevor Theelke provided that a majority of the space is occupied, and the businesses use remaining spots for their business operations. Off street parking is available on Fourth Street and McIntire.

PUBLIC COMMENT

Commission Chair Cowles opened public comment. There was no public comment.

DELIBERATION

Consensus that we do not need to dictate hours of operation and would prefer to strike that condition.

MOTION: Commissioner Nutkins motioned to approve SU19-05 with the following conditions:

1. Occupancy of the property for the approved use shall not be permitted prior to the issuance of State of Colorado Licenses for the references uses.

2. The Special Use Permit limits the number of for-sale vehicles on the property to a maximum of 15 at any one time, and such vehicles must be parked in the locations designated on the attached plan.
3. No servicing of vehicles is permitted to occur on the property.
4. The parking lot must be restriped by December 31, 2020 to better delineate the parking spaces and ADA space for public safety purposes.
5. A building permit shall be required at time of move in if any construction work is intended and/or for a change of occupancy.

Motion was second and passed unanimously.

File MS-19-02 770 Castle Drive Talley Subdivision

STAFF REPORT AND PRESENTATIONS

The applicant is requesting a minor subdivision to re-subdivide Lot 1 of the Callicrate Subdivision into three (3) separate residential lots, which then can be operated, sold, or developed respectively. Currently, the property includes two separate residential structures, which results in a non-conforming situation as the Town's Land Use Code only permits one principal structure per parcel. The applicant will bring this issue into conformance with the proposed minor subdivision by keeping one residence (the south westernmost structure) on one lot, demolishing the other structure and creating two vacant, developable lots.

Applicant Cindy Talley was present and provided additional details regarding her request.

Q & A

Clarification on buildings being removed was provided by applicant.

PUBLIC COMMENT

Commission Chair Cowles opened public comment. There was no public comment.

DELIBERATION

Motion: Commissioner Richards motioned to approve File MS19-02 with the following conditions as recommended by staff:

1. Depict the footprint of the existing residential structure that is to remain on the property on the Final Plat.
2. Town signatures will not be affixed to the final plat for recording until a demolition permit for the "2nd residential structure" on the property has been obtained through the building department.
3. Dedicate 5' along Castle Drive for public right-of-way; indicate on the plat that this area is 'dedicated to the Town'.
4. Revise lot areas as applicable based on r-o-w dedication required.
5. Provide a 7.5' Drainage and Utility Easement along all interior property lines.
6. Revise the 10' Drainage and Utility Easement along Castle Drive to a 10' Drainage, Utility, and Pedestrian easement.

7. Add a note to sheet 1 of the Final Plat indicating that “all utility and access easements are dedicated to the Town”.

Motion was seconded and passed unanimously.

DISCUSSION OF COMMISSION TERMS AND APPOINTMENTS

Terms are expiring in February 2020 for Jason Cowles, Brent McFall, Stephen Richards. Jason and Stephen will not be returning, Bill Nutkins indicated his desire to be a full member instead of an alternate. Kyle Hoiland and Charlie Perkins have terms up in later in 2020.

DISCUSSION ON MOBILE VENDING

Bill Shrum presented this item and asked for feedback regarding policy comments from the planning commission.

COMMISSION COMMENTS

Preferred to keep the policy flexible and allow Town Manager or designate staff to approve the permits. Town Board should not have to approve them. Concern regarding competition with brick and mortar stores and balancing that with how mobile vendors can be successful. We should not stifle opportunities to be creative. Would like to take a progressive approach. Concern about vendors using town power, would like assurances that they pay for use and license fees should reflect those impacts. Concern if we have too many it might take away from current business. More discussion on this and some felt it would add vibrancy and create options that would benefit all business. How would the Town determine availability and compliance? Bill stated that the River Park will be first come first served. We would generally leave it up to vendors to sort it out, if we have regulations, we would need to enforce them. Commission preferred to have a fee structure that did not subsidize the use of our right of ways and public land. Wanted them to pay their fair share. Did not feel that buffers were needed from other businesses. Noise issues were determined best to be handled by our law enforcement.

DISCUSSION ON SHORT TERM RENTALS.

Bill Shrum presented this item and asked for feedback regarding policy for Short Term Rental considerations. Some concerns acknowledged are those that believe this allows a commercial use in a residential zone and STR can be disruptive to the neighborhood. Kroner provided that she has viewed software management tools that can track licensing and do enforcement. Eagle currently has at least 150 Short Term Rentals advertised as available. The goal is to provide a system for the town to operate these transparently and consistently, Compliance will be an issue for Code Enforcement. Comments included concerns regarding losing rental housing and hoped this program would not detract from housing stock. There are concerns about the impacts on the community. Would like parity with commercial hotels and the lodging taxes collected. Discussed impacts on current hotel operations, limits on the number of units available and responsiveness of owners to deal with problems and complaints.

OPEN DISCUSSION

Inquiring on traffic impact trigger for Haymeadow Project. The Brush Creek Extension would be after first phase and minimum of five years.

Bill Shrum provided a broadband update and creation of an enterprise fund being presented to the Town Board for adoption on January 28th.

April Kroner reminded members of the joint meeting with the Town Board on February 4th regarding the comprehensive plan. The plan will be distributed to all shortly.

ADJOURN

Commissioner Perkins made a motion to adjourn and motion was seconded. All voted in favor. The meeting adjourned at 9:15 PM.