

Zoning Commission Appeal Hearing  
August 18, 2015

Present: Mayor Rose Hanser, City Councilpersons Tom Jankowski, John Williams, Greg Koczur and Lawretta Miller

Also Present: City Attorney Gary Ryder, City Clerk/Treasurer Michelle Richards and Planning/Building/Zoning Official Denise Sisson

Mayor Hanser called the Public Hearing to order at 7:00 pm. Following the Pledge of Allegiance, Clerk/Treasurer Richards called the Roll Call.

Planning/Building/Zoning Official Sisson explained the definition and reason for Conditional Use Permits and provided information from the Colstrip City Code for the residential zoning district the property is located in. She also read letter from former Planning/Building/Planning Official Jan Morgan dated January 21, 2014 during the construction of the home at 4019 Prospector notifying Mr. & Mrs. Vasicek of the requirements for a bed and breakfast and the commercial building codes the property would be subject to if they intended to operate a bed and breakfast.

Councilperson Miller asked how many businesses are licensed in the neighborhood. Denise does not know. Councilperson Koczur asked how many people present operate a business that signed the petition against the bed and breakfast. Two present stated they did.

Terry Olson, 4015 Prospector Drive, has a business license. He started his business prior to the incorporation of the City and got approval from the neighboring property owners when he started it. He objects to the granting of the conditional use. It is contrary to the covenants.

John Behles, 52 Snider Subdivision (6 miles north of town), asked for approval of the Conditional Use Permit without limitation. He presented the Zoning Commission's approval of the conditional use permit stating that there are some stipulations included that are incorrect. He stated the state building inspector is giving out false information. Interpretation of the building code changes when the Administrative Rules of Montana are applied.

Richard Vasicek, 4019 Prospector Drive, did not receive the letter dated July 21, 2015 from the Planning/Building/ Zoning Official until the last City Council meeting. He doesn't think Bed and Breakfasts have to follow the ADA rules. If the bed and breakfast is considered commercial than he feels everyone operating a business out of their home should be considered commercial.

Pat Campbell, 4417 Remington, is confused about which code and ordinances we are supposed to follow. He feels people should be allowed to use their property as they wish. There also is no commercial property available to start a business.

Ed Buchholz, 4416 Remington, stated Mr. Vasicek told him it was going to be a residence and that he gave up on the bed and breakfast. If he didn't read the covenants for the property, ignorance is not an excuse. He feels having a bed and breakfast would be disruptive. Most of the people most affected by this have said they don't want the bed and breakfast. He applied for a variance to put in an apartment in his shop. He was upfront and asked permission and followed the process.

Councilperson Koczur asked if Mr. Buchholz is against the businesses already in the neighborhood, against any new businesses starting and how does he know it will affect property values. Mr. Buchholz doesn't know for sure about the effect on property values but doesn't want to take a chance. He isn't against a business if you don't know it's there.

Rick McCulloch, 4323 Ballantine Drive, commented on the park that CPRD recently put it in the neighborhood. Since the park was put in traffic has increased tenfold and he has had vandalism at his home. This happened before the bed and breakfast.

Pat Campbell, 4417 Remington, commented that his property appraised higher and the appraiser attributed it to Mr. Vasicek's and other new homes in the neighborhood. He said there is a lot of traffic due to people going to the horse corrals and kids partying.

Darrell Aaby, State Building Inspector for the area, explained because of the nature of the bed and breakfast it is a commercial building because of the transient guests. Transient guests are defined as staying less than 30 days.

Attorney Ryder addressed the City Council. Mr. Wier and Mr. Campbell followed the Conditional Use Permit process and were granted. They were upfront about their intentions and there was no opposition from their neighbors. He pointed out the City Code section that states 8-3-7 that the use of the dwelling for home occupation clearly must be incidental and subordinate to its use for residential purposes. If the applicants had followed the process and procedures contained in 8-1-10 before they built the bed and breakfast it may not have been an issue.

Dennis Hirsch, Building Inspector for the cities of Forsyth, Miles City and Colstrip, explained that the building code is more strict for bed and breakfasts than for residential homes. He also explained it must also be inspected by the County Sanitarian and meet those requirements.

The Public Hearing was closed at 8:00 pm.

Councilperson Williams disclosed that he had some conversations with Mr. Vasicek early this spring regarding his frustrations. He has not had any conversations since with either those in favor or against since the Zoning Commission's decision. The Zoning Commission's approval was subject to approval of the State Building Inspector and he has stated it is considered a commercial building due to its use. He feels the petition signed by those opposed is significant. It is also significant to him that others in similar situations have followed the process and it appears that has not been done in this situation.

Councilperson Koczur disclosed that he had talked to Mr. Vasicek about how to move forward with getting a bed and breakfast approved prior to the Zoning Commission hearing and decision. He stated this is a very tough, no-win deal.

Councilperson Jankowski thanked everyone who spoke either pro or con. There is obviously some confusion about residential and commercial. He understands the stance on the commercial type building. He respects that people spent a lot of money building in the area. Mr. Vasicek has built a big house and invested a lot of money in it and he hopes the neighbors consider his investment too. Colstrip is very unique and there is no land available. Feels as a council member need to be considerate of what people want to do with their property.

Councilperson Miller stated this is a really tough situation and it is tough to try and make everyone happy. The Vasiceks have spent a lot of money on their property. She thanked everyone who have made comments. She hopes everyone can move forward and get along regardless of the outcome.

Motion: Councilperson Jankowski moved to approve a Conditional Use Permit for 4019 Prospector Drive for a Bed and Breakfast with condition that any codes and permits required by the state to make the business viable to operate. Councilperson Miller seconded the motion.

Discussion: Councilperson Miller commented that all conditional use permits include requirements to follow state and city codes. Councilperson Jankowski was not at the Zoning Commission hearing and there was a lot of discussion there, he is making his decision based on their decision. Councilperson Koczur stated they need to come into compliance with everything that needs to be done. If there is a violation he is sure the City will hear about it. Councilperson Williams is voting against based on the information provided, those in opposition and out of respect for those that have followed the process as it is intended. Mayor Hanser pointed out that the Zoning Commission did not understand that written comment is just as valuable as the comments made in person and didn't consider the signatures on the petition submitted against the bed and breakfast.

Public Comment: Ed Buchholz, 4416 Remington, stated at the Zoning Commission hearing one of the commissioners stated she had a migraine and only heard every third word. One commissioner had her mind made up before the meeting. He doesn't feel should make this decision based on the Zoning Commission as there was only one unbiased commissioner. He stated there will be a lawsuit filed if this is approved.

John Behles commented that the 16 signatures on the petition against the bed and breakfast is not a majority of the landowners.

John Sisson, 22 Cornflower Court, has worked in construction most of his life and stated that typically in this type of situation construction plans/drawings are developed and approved by all of the governing agencies involved detailing the intended use. If this had been done at the beginning it may have made the decision easier.

Mayor Hanser read the petition signed in opposition to the bed and breakfast.

Terry Olson, 4015 Prospector, feels Councilperson Miller should excuse herself from the vote. All of the neighbors except one signed the petition. There is a lot of opposition to this.

Vote: Councilpersons Koczur and Miller voted in favor. Councilpersons Jankowski and Williams voted against. Mayor Hanser voted against. Motion failed.

Councilperson Jankowski moved to adjourn the meeting. Councilperson Koczur seconded the motion. Meeting adjourned at 8:25 pm.

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Michelle Richards, City Clerk/Treasurer