



**CITY OF MANITOU SPRINGS  
PLANNING COMMISSION  
REGULAR MEETING MINUTES  
AUGUST 9, 2017**



**I. CALL TO ORDER**

A Regular meeting of the Manitou Springs Planning Commission was held in Council Chambers @ 606 Manitou Avenue. Chairman Delwiche called the meeting to order at 6:00 pm and declared a quorum present. The following Commission members attended:

**PRESENT:** Chair ALAN DELWICHE  
Vice Chair JEANNE VROBEL  
Commissioner JULIE WOLFE  
Commissioner LORI BURRIS  
Commissioner MIKE CASEY  
Commissioner JULIA SIMMONS  
Alternate Commissioner CAREY STORM

**ABSENT:** Commissioner GLORIA LATIMER (Excused)

**STAFF:** Wade Burkholder, Planning Director  
Michelle Anthony, Senior Planner

**GUESTS:** Coreen Toll, City Council Liaison

**II. APPROVAL OF MINUTES**

**ITEM 1.** July 12, 2017

**MOTION:**

Commissioner Wolfe moved to approve the July Regular Meeting Minutes with the following correction(s):

1. Page 6, Line 10: Amend “he” to “the”

**SECOND:**

Commissioner Storm seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion Passed, 5-0. Commissioner Vrobel and Commissioner Casey abstained as they were not present for the July Regular Meeting of the Planning Commission.

**III. NOTICE OF COUNCIL ACTION**

**ITEM 2. RE 1716** - Rezone (Commercial to High Density Residential – Public Hearing) - 115 Beckers Lane – Ryan Lloyd of Echo Architecture on behalf of Manitou LLC, Applicant. City Council approved the rezoning request at first reading on August 1, 2017. Second Reading was scheduled for August 15.

**ITEM 3. RE 1717 – RE 1733** – Rezone (Hillside Low Density Residential/Low Density Residential to Open Space) – City of Manitou Springs, Applicant. City Council approved the rezoning request at first reading on August 1, 2017. Second Reading was scheduled for August 15.

**ITEM 4. VAC 1702** – Vacation of Right-of-Way (Undeveloped Rosemary Lane) – 320 and 326 Manitou Avenue – Janice Woodward Representing Dan C. Hill Estate, Applicant. Scheduling this request for City Council is pending the Applicant providing the legal description for the vacation.

*At this time, Chairman Delwiche reviewed the meeting procedures for those present in the audience and asked if any Commissioner had Ex Parte Contacts or Conflicts of Interest to declare. Hearing none, the meeting continued.*

#### **IV. UNFINISHED BUSINESS**

**ITEM 5. MaCUP 1705** – Major Conditional Use (Event Space) – 717 Manitou Avenue, Unit 301 – Priscilla B. Stachel, Applicant

Michelle Anthony, Senior Planner, presented the Staff Report dated August 9, 2017.

Commissioner Wolfe inquired how the engineer determined the increase in vehicle trips during the week would increase by sixty-nine (69) vehicles per day from the existing usage. Ms. Anthony responded the engineer had applied the four apartments or persons living in the apartments, noting it was originally just one apartment, and then applied a junior/community college category which accounted for groups of people taking classes.

Commissioner Casey inquired what the nature of the disconnection between Pikes Peak Regional Building Department and the Manitou Springs Fire Department was which had occurred. Ms. Anthony responded, in looking at the Code, it was obvious to her the Pikes Peak Regional Building Department should have considered it a change of use, however, through the last discussion she had with them, despite having a Code Study showing the change in use, they had denied its actual change. Commissioner Casey inquired if, on this particular topic, Staff agreed with the finding of the Fire Department over Regional. Ms. Anthony responded Staff agreed with the findings of the Fire Department.

Commissioner Casey stated, in reference to Staff Recommendation Number Seven (7), he thought the building had a second egress on the third floor. Ms. Anthony responded the second egress was located on the second floor, not the third floor and inquired where the second egress on the third floor was located. Commissioner Casey responded it was located in the back of the building. Ms. Anthony responded the fire escape only went to the second floor and did not reach the third floor. Commissioner Casey stated he was positive there was an external staircase on the outside of the building, in back, which accessed the third floor. Ms. Anthony stated if that was the case, the Applicant would need to correct the information.

Commissioner Wolfe inquired if there were any concerns with the tenants experiencing noise issues and asked for clarification so long as the Applicant abided by the City's noise ordinances, they would handle any noise issues from the event space with tenants internally. Ms. Anthony responded it was common for some of the other businesses, if they left a door or window open while an event was occurring, to receive a call from the Police Department if there were any complaints.

Hearing no further comment from, or questions, for Staff, Chairman Delwiche invited the Applicant to the podium.

Michael Barsotti, 717 Manitou Avenue, introduced himself but made no initial comment regarding the request.

Priscilla Barsotti-Stachel, 115 Canon Avenue, stated she felt the Staff Report was somewhat convoluted and it appeared at one point the Report was recommending denial but at another point recommending approval with conditions. Ms. Barsotti-Stachel stated the building was constructed in 1888 and her parents had done a major renovation about forty years (40 yrs.) prior. Ms. Barsotti-Stachel also stated, as Ms. Anthony had noted in the Report, they had been good stewards of the property and noted she had written a grant through the Historic Preservation Commission four years (4 yrs.) ago, but was still unable to afford the cost of renovating the building to the standards she would like. Ms. Barsotti-Stachel stated she would like to improve the building and bring it up to safety standards, but lacked the necessary funds to do so currently which was partly why she was making the request, as a means of bringing in more income. Ms. Barsotti-Stachel stated she also owned a parking lot adjacent to the building off of Duclou Avenue which was not actually affiliated with the property and felt it had been a blessing they had the lot to offer parking to their tenants and offices.

Ms. Barsotti-Stachel stated she felt confident she would be able to provide parking for her tenants and businesses, but paving the lot would be a huge expense and felt the gravel parking lot was safer in the winter due to the downward slope of the lot and ice concerns.

Ms. Barsotti-Stachel commented she was in support of the restricted hours of operation and had tried to stress the space was not a typical or ordinary gallery as any event would be by invitation only. Ms. Barsotti-Stachel stated she was surprised the only way to evaluate the increase in vehicle trips per day was to evaluate the use the same as a junior or community college and felt it would be more reasonable to compare the use to that of the Common Wheel or the Manitou Art Center, despite the fact her gallery would not be open to the public.

Ms. Barsotti-Stachel stated there was a fire escape which accessed the third floor and commented it would be very difficult to add any further points of egress to the old structure, as had been pointed out by architects and contractors like Chuck Murphy of Murphy Constructors and Chuck England.

Ms. Barsotti-Stachel stated, in regards to a liquor license, she may pursue a license for the art gallery for showings and openings.

Ms. Barsotti-Stachel commented she was not looking to do anything which would risk the safety of her tenants and customers and was concerned about the funding it would take to accomplish the conditions listed in the Staff Recommendations. Ms. Barsotti-Stachel inquired if there was any sort of extension which would allow them more time to fund the necessary improvements, as they had already spent several thousand dollars just in going through this process.

Commissioner Casey inquired if the Applicants had any plans to play amplified music at the event space. Ms. Barsotti-Stachel responded she had put everything on the application which she thought the space could be used for and not necessarily what it will be used for. Ms. Barsotti-Stachel commented she currently had a tenant who was a performance artist and they would like to teach Cirque du Soleil style hoop and swing classes and another visual artist, who was also a tenant, who would likely be showing her art in the space. Ms. Barsotti-Stachel also commented she had also, at one point, had an office space rented to the Mayor, although it did not ultimately come to fruition. Ms. Barsotti-Stachel stated, in response to Commissioner

Casey's question, there may be a quartet or jazz ensemble playing a gallery opening on Sunday afternoons. Mr. Barsotti stated there were amplifiers in the space, but he would ask any music to be in conformance with the City's noise ordinances, as was also required by their tenants.

Ms. Barsotti-Stachel commented the residents lived on the second floor and she felt it was almost like a family as they and the tenants all knew one another and there were often barbeques and general comradery amongst the group. Ms. Barsotti-Stachel reiterated she had simply put everything the space could potentially be used for as it evolved into the future into the application in order to cover everything she could think of.

Chairman Delwiche stated Ms. Barsotti-Stachel had mentioned with the recommended conditions of approval, it may be financially unfeasible to complete them all in the recommended time allotted and inquired if the Commission waived Conditions Five and Condition Seven (#5 & #7), it would it then be more feasible. Ms. Barsotti-Stachel inquired which conditions those were. Chairman Delwiche responded Condition Five referred to the requirement for paving the parking lot and Condition Seven referred to the second egress to the existing fire escape. Ms. Barsotti-Stachel and Mr. Barsotti were both in agreement it would be a help, but were also concerned about the cost of the fire sprinkler system and the extent of the work it would take to install because of the building's age. Ms. Barsotti-Stachel also stated she would like to have more time to do research on a fire suppression system.

Commissioner Storm inquired if the Fire Department had gone to the site and simply not noticed the third floor secondary egress. Mr. Burkholder responded the letter from the Fire Department clearly stated a second egress point from the third floor was a requirement. Ms. Anthony commented the Code stated there had to be both a second egress from the third story, as well as, a fire suppression system and stated the space could not be used for events until a fire suppression system was installed. Ms. Anthony also stated she was aware there were other systems, other than the sprinkler systems, which used chemicals and other methods, but was not sure if they were more or less expensive.

Commissioner Wolfe inquired if the Fire Code upgrade for the suppression system was for the entire building or just the third floor. Ms. Anthony responded it was the entire building because, depending on where a fire occurred, there were still people attending events on the third floor.

Commissioner Casey stated in the Staff Report it notes that Mr. Barsotti was present when the Fire Department was at the location. Mr. Barsotti responded he was present when the Fire Department was there. Commissioner Wolfe inquired how the third floor secondary egress was missed. Mr. Barsotti responded the Fire Department did not ask to go onto the third floor and likely did not notice the secondary egress. Mr. Barsotti commented the Fire Department only looked at the proposed event space.

Hearing no further comments from or questions for the Applicant, Chairman Delwiche opened the Public Hearing.

Coreen Toll, City Council Liaison, stated she felt the City was at a crossroads regarding housing and live/work space and stated the Housing Authority Board had been looking into best practices regarding housing regulations and making the Zoning Code more flexible. Ms. Toll stated she felt the proposal was creative and a good spark for getting things going in that regard. Ms. Toll stated she had been at a Housing Authority Board meeting and had seen a presentation for co-housing senior living facilities and stated she hoped there would be more dialogue to come up with a safe solution for residents.

Hearing no further comment from the Public, Chairman Delwiche closed the Public Hearing.

Commissioner Storm stated she was less concerned about the parking issues and more concerned about the fire issue. Commissioner Storm further recommended the request go back to the Fire Department for further research and information now it had come to light there was an existing secondary egress on the third floor.

Commissioner Simmons stated she liked the concept of a live/work space, but agreed with Commissioner Storm regarding the fire suppression system and safety.

Commissioner Wolfe stated she agreed with Commissioner Storm as well and stated there would be less demand for parking during the off-season which was why she was also not as concerned about the parking issue. Commissioner Wolfe also stated the Fire Department had indicated they were simply trying to follow the law which required a fire suppression system in addition to the secondary egress and felt it would be beneficial for the Fire Department to provide some information to the Applicants regarding the types of fire suppression systems available. Commissioner Wolfe stated she did not feel she could make a determination until they knew what was going on with the fire suppression system, because without one, she did not feel comfortable with an approval for the event space.

Vice Chair Vrobel stated she would like to see the request postponed without any additional fees until the fire suppression system had been further researched and felt the Applicants could use more than a month to get things in order. Vice Chair Vrobel stated she was concerned about the safety of event goers but was in support of the project as a whole.

Chairman Delwiche stated he agreed with Vice Chair Vrobel.

Ms. Anthony stated if the Commission wished to postpone the request, they should postpone it for a month in case the Applicants were ready in that time as not to hold them up.

**MOTION:**

Commissioner Wolfe moved to table MaCUP 1705 until the September Regular Meeting.

**SECOND:**

Commissioner Storm seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion Passed, 7-0.

**V. NEW BUSINESS**

**ITEM 6. MNS 1704** – Minor Subdivision (Create One Lot) – 708 Manitou Avenue – Oliver E. Watts on behalf of Manitou Springs Metropolitan Parking District, Applicant

Michelle Anthony, Senior Planner, presented the Staff Report dated August 3, 2017.

Hearing no comment or questions for Staff, Chairman Delwiche invited the Applicant to the podium.

Randy Hodges, 711 Manitou Avenue, Chair of the Metro Board, stated he felt the proposed dedications were nibbling away at the property, but also felt it was a part of the process of bringing the two story parking facility to fruition. Mr. Hodges stated the property was owned by the Metro District, which was comprised of a collection of business owners in the area and the proposed facilities were for their benefit, as well as, the benefits of the residents. Mr. Hodges stated several studies had been done regarding the parking issues in Manitou Springs and it was determined this location was a good fit for a structure of this type and stated regardless of whether a parking structure went there or not, there were also bridge issues which would need to be addressed. Mr. Hodges stated he felt confident he could accomplish the Staff Recommendations within the allotted ninety (90) days. Mr. Hodges also stated the Metro District was in the preliminary stages of putting together a committee to address the feasibility of the location and to determine whether or not it is a good fit and he was willing to work with the merchants and the community to produce something both will value.

Hearing no further comment from, or questions for, the Applicant, Chairman Delwiche opened the floor for Public Hearing.

Cheyenne Grow, 118 Lafayette Road, stated he had been a resident of Manitou Springs for over thirty years (30+ yrs.) and inquired if anyone was in the room when the Metro Board was voted on in 1989. Chairman Delwiche stated he was present when the vote had occurred. Mr. Grow inquired, in regard to the service agreement on the Metro Board's website, if he could read from it to provide the spirit of what the Metro Board had intended to be when it formed. The Commissioners agreed and Mr. Grow handed copies of the agreement to the Commissioners at the dais.

Mr. Grow stated he was at the meeting to try to represent how the local residents felt about the proposed parking structure and stated he would like to remind the City when the Metro Board was initially voted on, it had many more responsibilities than just parking. Mr. Grow then read the portions of the agreement into the record and stated in the last twenty-eight years (28 yrs.), he was not aware of any progress made on Phase II of the agreement despite Phases I and III having been implemented. Mr. Grow stated the original intention of the Metro Board was to alleviate downtown parking congestion and to add beauty and recreational areas to the City. Mr. Grow stated the spirit of the agreement was to minimize impact, create nice outdoor spaces for the community and visitors, and lastly, to create parking.

Mr. Grow stated he would like the City to keep in mind the spirit of the agreement as this process moves into the development phase and asked the Commissioners and Council Members to ask themselves how well the development fits the spirit of the agreement. Mr. Grow stated the last study done in regard to the parking in Manitou was done ten years (10 yrs.) ago when the avenue was four lanes and questioned how well a two-story parking structure would fit in the Downtown Zone today.

Mr. Grow stated, as part of the agreement, the Metro Board was charged with finding alternatives and areas for recreational facilities and parks in the downtown area to recapture the aesthetic beauty, joy, and spirit of a century ago.

Mr. Grow stated he felt parking options were needed in Manitou Springs, but would like the City to consider the original spirit and intent of the agreement and which compromises they were willing to make to provide access for more cars and people to enter and enjoy the downtown area. Mr. Grow commented the City should also consider whether or not the implementation of the parking structure prior to the implementation of the Creekwalk Trail was in keeping with the original intent and spirit of the agreement. Mr. Grow then reread the opening part of the agreement which reiterated the original intent of the Metro Board. Mr. Grow

stated he would like to see the Commission defer any decisions on the Minor Subdivision or future Development Plans until it can be determined beyond a reasonable doubt this is congruent with the spirit and original intent of the agreement.

Commissioner Casey stated Mr. Grow's presentation was excellent and thanked him for his involvement in creating a discussion and dialogue regarding the issue.

Nancy Fortuin, 521 Crystal Hills Boulevard, Chair of the Open Space Advisory Committee, stated the Creekwalk Trail was the most widely supported part of the Parks, Open Space, and Trails Master Plan and wanted to thank Staff for including it in the Staff Report for consideration of this request.

Hearing no further comment or questions from the public, Chairman Delwiche closed the Public Hearing.

**MOTION:**

Commissioner Wolfe moved to approve MNS 1704 to create Lot 1 in the Metro Parking Subdivision based on the criteria set forth in Chapter 16.10 of the Subdivision Code with the following conditions:

1. Prior to filing, the plat shall be updated to include the following:
  - a. Size of the property in feet and acreage added to the metes and bounds legal description
  - b. Width of Manitou Avenue and Lovers Lane rights-of-way
  - c. A plat note added stating "There are no areas of 30% or greater slope on Lot 1."
  - d. Any amendments as recommended by the City's Consulting Engineer upon review of the final plat document
  - e. The As Platted graphic will be amended to indicate the ownership parcel under consideration
  - f. The limits of the 100-year floodplain shall be shown on the As Replatted graphic
  - g. Area of dedication to the City of Manitou Springs for the Creek Walk Trail shall be delineated graphically and the square footage and a dedication statement provided
  - h. Five foot easements along the property lines from Manitou Avenue and along the top slope adjacent to Fountain Creek on the west side of the existing bridge, and up the western property line for utilities purposes
  - i. A seven-foot easement along the rear property line adjacent to Lovers Lane for utilities and public access purposes
2. The property owner shall provide a minimum 10' easement between the Creek Walk dedication and Manitou Avenue to allow for pedestrian/bicycle access by the public and utilities. This easement is required prior to issuance of any Building Permits for redevelopment of the property. Should redevelopment not occur within 24 months of this Minor Subdivision approval, the property owner shall provide both a written description and graphic depiction of the easement area and use, and shall be subject to the City's review and approval
3. The property owner shall pay any Parks or Open Space fees remaining after the deduction of dedicated square footage before filing of the plat. Should the property owner request waiver of any such remaining fees, that will be subject to the review and approval of the Park and Recreation Advisory Board and the Open Space Advisory Committee
4. The Applicant had 90 days from the date of approval to provide all required information, corrections and additions, allow time for City review, and submit the final Mylar for filing or this approval will expire.

5. The Surveyor shall provide CAD drawings of the final, approved plat at the time of submission of the final Mylar for filing to allow the City to update its GIS data.

**SECOND:**

Vice Chair Vrobel seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion Passed, 7-0.

**ITEM 7. MJR 1701** – Major Development (Three-Story Mixed-Use Building) – 1335 Manitou Avenue – Todd Liming of Planning Matters on behalf of Greg Wellens of Elezier Inc., Applicant **(POSTPONEMENT REQUESTED)**

Wade Burkholder, Planning Director, stated Staff had learned the building footprint was actually changing and the Applicants have requested postponement until the Regular September Meeting in order to allow for more time to reevaluate the request.

**MOTION:**

Vice Chair Vrobel moved to postpone MJR 1701 until the September Regular Meeting.

**SECOND:**

Commissioner Storm seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion Passed, 7-0.

Commissioner Wolfe stated she was confused because she thought the building had already been constructed. Ms. Anthony responded it had not yet been built and this was a new structure. Chairman Delwiche commented this was a different structure than the one in which Commissioner Wolfe was thinking which was next on the agenda.

**ITEM 8. V 1701** – Variance (Height) – 1207 Manitou Avenue – Mike Edwards of New Vision Custom Builders on behalf of Gregory Cobble and Jennifer Parker, Applicant

Michelle Anthony, Senior Planner, presented the Staff Report dated August 4, 2017. Ms. Anthony also presented a letter written by Mike Edwards of New Vision Custom Builders in regard to the request for a Height Variance. The letter stated Mr. Edwards had built the home to the standards set forth by the Pikes Peak Regional Building Department and the height of the existing home was close to the height requirement set forth by the City of Manitou Springs' regulations and standards. The letter also stated the house's location in the floodplain had made reaching those height restrictions difficult, despite Mr. Edwards having been aware of what the restrictions were.

Chairman Delwiche interrupted the presentation of the Staff Report and asked for clarification regarding the correct height of the front elevation, as provided in the variance application, and pointed out a mathematical error in the Staff Report which calculated half of the total height for the building average as twenty-six feet seven inches (26 ft. 7 in.) on a total height of fifty-one feet two inches (51 ft. 2 in.). Chairman Delwiche clarified it should have read the half of the total height for the building average was twenty-five feet seven inches (25 ft. 7 in.), which made the building only seven inches (7 in.), as opposed to one foot seven inches (1 ft. 7 in.), above the twenty-five foot requirement. Ms. Anthony confirmed this was correct.

Commissioner Storm inquired since the top floor was approved as storage only, what the plan would be for the contractor given the minimum head height allowance of six feet eight inches (6 ft. 8 in.). Ms. Anthony responded the minimum head height allowance referred only to living spaces, not storage spaces.

Commissioner Wolfe inquired if, after the mathematical correction, the building was only one foot (1 ft.) taller than it was supposed to be. Ms. Anthony responded it was actually only seven inches (7 in.) taller under that particular measurement, however, the City used the more restrictive measurement of the two measurements when calculating the height discrepancy which was three feet two-and-a-half inches (3 ft. 2 ½ in.) taller than the Code allowed.

Ms. Anthony continued presenting the Staff Report.

Commissioner Casey inquired what the ramifications would be if the Variance was denied and asked if the owners could receive a Certificate of Occupancy without being in compliance or if they would have to wait until the building was compliant. Ms. Anthony stated Staff would not issue a Certificate of Occupancy until the height of the building was in compliance with the Zoning Code. Ms. Anthony further stated the contractor would likely need to remove the roof, remove part of the upper floor, and rebuild.

Commissioner Casey inquired if the Application would go on to City Council. Ms. Anthony responded it would only go before City Council on an Appeal.

Hearing no further questions for or comment from Staff, Chairman Delwiche invited the Applicant to the podium.

Mike Edwards, New Vision Custom Builders, 1430 Sutherland Creek Road, introduced himself, but made no comment regarding the request.

Gregory Cobble, 6217 Palisades Drive, Lawrence, Kansas, stated he had always dreamed of having a house in Colorado, but never intended to build anything on the lot as quickly as he had. Mr. Cobble stated when he had purchased the lot, the lender had informed him he had only made a balloon payment and would need to either pay the loan back in two years or build on the lot, which he had chosen to do the latter. Mr. Cobble also stated he had initially thought the property could be used as a Vacation Rental by Owner (VRBO), but had discovered this would not be possible given the property's location within the separation distance of other Vacation Rentals and the City's Codes. Mr. Cobble stated he had faced numerous obstacles throughout the process of building on the lot and he was nearly "tapped out" in terms of financial resources for the project. Mr. Cobble stated he had spent upwards of twenty-five thousand dollars (\$25,000.00) digging in an attempt to connect to the City's water. Mr. Cobble asked Mr. Edwards to speak about the numbers.

Mr. Edwards stated Ms. Anthony had read his letter to the Commission and stated he personally had calculated the half height to be twenty-six feet three inches (26 ft. 3 in.) which would make the building

fifteen inches (15 in.) too high, which differed from the calculation made by Staff. Mr. Edwards stated the cost to bring the height of the house down would be a minimum of twenty-six thousand dollars (\$26,000.00) and commented anything which would need to be done to the building, such as removing the third floor, would devastate its appearance.

Commissioner Wolfe inquired who would be liable for the costs to bring the building into compliance and to remedy the issue. Mr. Edwards responded he had to meet the requirements of three different entities which was difficult and began discussing how the height of the building could have been lowered had the building not had to meet floodplain requirements.

Commissioner Storm interrupted Mr. Edwards and inquired why Mr. Edwards did not follow the Code when building the structure. Mr. Edwards responded the first floor was at the minimum ceiling height of eight feet (8ft.). Commissioner Storm stated Mr. Edwards had the opportunity to modify the plans when he was informed he was outside of the height limit. Chairman Delwiche interjected to state the Commission had no need to provide input in regard to the intent of Mr. Edwards.

Mr. Cobble stated the construction team had hit rock while excavating which meant the construction could not follow the original blue prints because the original width of the structure had to be modified. Mr. Cobble stated this caused the structure to become narrower and, therefore, they decided to extend the height of the structure. Chairman Delwiche commented the Commission was not there to debate whether Mr. Cobble should have a big house or a small house, but to better understand the issue in regard to the City's Codes.

Mr. Edwards stated the floor heights were at the minimum allowable height, including the third story, and even though the third floor was basically an attic, there were still stairs which were needed to access the space. Mr. Edwards stated the top of the stairs had a minimum height allowance of six feet eight inches (6ft. 8 in.), which is exactly the height he had built to.

Chairman Delwiche inquired if Mr. Edwards had any documentation to refute the claims made by Staff in the Staff Report and commented the Commission was there to discuss the excesses, not the whys, and the Commission understood the contractor had to adhere to floodplain regulations and height restrictions. Chairman Delwiche further commented Staff's analysis was the height of the building exceeded what was allowable under the Code and inquired if Mr. Edwards was challenging what Staff had found in regard to the height and reiterated the fact the Commission was not there to discuss the reasoning behind why Mr. Edwards did not adhere to the Code, but to understand what the excess was over the allowable twenty-five foot (25 ft.) height. Mr. Edwards stated he did not deny the building was in excess of the allowable height.

Commissioner Simmons inquired if Mr. Edwards had calculated a discrepancy of fifteen inches (15 in.), where Staff had calculated a three-foot (3 ft.) difference. Mr. Edwards stated with the mathematical correction, the difference was smaller than that. Chairman Delwiche clarified there were two measurements and the most restrictive one was the one the City adhered to and there was no mathematical miscalculation on that particular measurement. Ms. Anthony commented the measurement she had come up with was three feet two and a half inches (3 ft. 2 ½ in.) above the allowable height restriction and if one looked at the revised plans submitted by Mr. Edwards, the proposed existing grade was twenty-seven feet seven inches (27 ft. 7 in.). Ms. Anthony stated what Mr. Edwards had done was taken the existing calculation and the finished calculation and combined those to get an average between the two, which was not how the City performed its calculations. Ms. Anthony stated this gave Mr. Edwards the number twenty seven feet four inches (27 ft. 4 in.). Chairman Delwiche commented there was then a difference of less than a foot (1 ft.) between the two calculations. Ms. Anthony confirmed.

Mr. Edwards asked for clarification whether the Commission considered the cost of bringing the building into compliance with the Code. Commissioner Wolfe responded the Commission was not legally allowed to consider the cost because the laws stated so and the Commission had to adhere to the City Code. Mr. Cobble commented, in regard to who would be covering the cost of the rebuild, he felt if they removed the third floor there was concern the square footage would not be enough in the appraisal for which the loan was made. Mr. Cobble further stated he did not know what he was going to do if he was forced to remove the third floor.

Vice Chair Vrobel stated Mr. Edwards had not met five of the seven criteria for a variance and inquired if Mr. Edwards had any argument to refute what Staff had found in regard to the height of the building. Mr. Edwards asked if the Commission would reiterate the points made by Staff. Commissioner Wolfe stated the Staff responses were in the Report and it was not necessary to rehash them. Mr. Edwards stated, in regard to the Staff Report and keeping with the integrity and vision of the City's standards concerning real estate and the notion if the Commission allowed the home to be built out of Code, they would be expected to allow other homes in the future to be built out of Code, he would like to suggest the City consider an amendment which concerned building in the floodplain, or any of nature's other deviations to a lot, the City would allow a combination. Commissioner Wolfe stated the Commission was not responsible for making laws or ordinances, only interpreting them and commented Mr. Edwards could potentially bring the suggestion to City Council.

Mr. Edwards stated, in closing, he had nothing but praise for the home and its current appearance and stated he felt the home fit in with the surrounding area. Mr. Edwards also stated he felt it would be a shame to have to do something different to the structure.

Mr. Cobble stated he did not feel as though he understood the Commission's procedure and commented he simply wanted to make the space usable and aesthetically attractive. Mr. Cobble stated he hoped for a positive consideration from the Commission in regard to the height because he was so "tapped out" financially, he was not sure of what he would do if the variance was not granted.

Hearing no further comment from or questions for the Applicants, Chairman Delwiche opened the Public Hearing. Hearing none, the Public Hearing was closed.

Commissioner Wolfe stated she did not feel the Commission had much choice in the matter. Chairman Delwiche stated he was in agreement. Commissioner Storm stated she felt the Staff Report and the laws were clear. Vice Chair Vrobel stated the Commission was there to enforce and follow the laws. Ms. Anthony commented there was nobody on the Commission or Staff which relished the idea of causing financial burden on anyone and she did not refute the home looked very nice the way it currently existed, but she could not find the justification for a variance based on the City's Code. Chairman Delwiche commented the Commission was strict in asking for those justifications to grant a variance.

Commissioner Simmons inquired if there was an inspection process during construction which would have found the building was not in compliance with the Code. Ms. Anthony responded it was difficult to make a site visit and determine if it appeared the structure was over the height limit, however, during the plan review process, Staff could establish the numbers and determine whether or not the plans met the Code requirements and Staff could make a site visit to compare and visually determine if there is an extra floor or addition which was not on the plans that may affect the building height. Ms. Anthony stated Staff did not have the surveying equipment to go and actually verify whether the building was within the height limit.

Commissioner Casey stated the Staff Report was well written and it was blatantly obvious there was an error on the behalf of the general contractor. Commissioner Casey stated he felt it was somewhat ridiculous to force the removal of the roof over such a small discrepancy in height and commented other resident's views were not obstructed in any way. Commissioner Casey stated he understood adhering to law and what had occurred with the paperwork, but implored the Commission to use common sense in the matter because it made no sense to force the builders to destroy the aesthetic integrity of the structure and cause financial hardship on the owner when there wasn't even a complaint regarding the property from the community.

Commissioner Wolfe commented she felt approval of the variance, as Commissioner Casey suggested, could set a dangerous precedent. Commissioner Casey commented the Commission was not bound by precedents. Commissioner Wolfe stated the Commission was bound by precedents and there had been lawsuits and threats of lawsuits against the City when precedents were not followed. Commissioner Wolfe cited the occurrence with the Twelve Tribes of Israel in which the Commission was citing law and the Twelve Tribes of Israel were citing precedents. Commissioner Wolfe stated the City Council had sided with the Twelve Tribes and stated precedents were a legally scary thing to set as the City could be held to those precedents despite what the Code stated. Commissioner Casey stated he understood that position, but the Commission was there to make a determination on a case by case basis. Commissioner Wolfe stated the Commission existed to follow the law on a case by case basis.

Commissioner Casey inquired why the Commission existed if they simply followed the law. Commissioner Wolfe responded the Commission existed to interpret and enforce the laws. Chairman Delwiche stated the Appeal Process was in place for an appeal to City Council which had more latitude to change law or interpret the law and stated he was concerned setting a precedent could lead to the feeling it was better to ask for forgiveness than for permission. Commissioner Storm also stated it could lead to a problem with other residents in the neighborhood who had followed all the rules instead of building however they desired, to know consideration of their variances were not treated equally.

Commissioner Casey stated he could see which way the Commission was leaning and he hoped City Council might achieve what the Commission had not, because he felt it did not make any sense to deny this variance. Commissioner Wolfe commented she hoped City Council did not overturn the Commission's decision because precedent had prevented the City from adhering to the Code in the past and felt it was a dangerous thing to set.

**MOTION:**

Vice Chair Vrobel moved to deny V 1701 for an after-the-fact three foot two and a half inch (3 ft. 2 ½ in.) Height Variance to provide a thirty-one foot four and a quarter inch (31 ft. 4 ¼ in.) calculated building height at 1207 Manitou Avenue for construction of the existing structure with the following findings:

1. That the representations in the application are not valid and the application has not met the criteria established in Section 18.32.010\* of the Zoning Code;
2. That the reasons set forth in the application and Staff's evaluation in regard to the building height do not justify the granting of the variance and the variance is not the minimum that will make possible the reasonable use of the land;
3. That the granting of the variances will not be in harmony with the general purpose and intent of the City's Vision Plan and the Zoning regulations and would be detrimental to the public welfare.

**SECOND:**

Commissioner Wolfe seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion Passed, 6-1. Commissioner Casey voted against the motion.

Ms. Anthony reminded the Applicants, should they choose to make an Appeal to City Council, they must make a submittal within ten (10) days.

**VI. OTHER BUSINESS**

**ITEM 9. Discussion and Recommendation Regarding Further Revisions to the Draft Sexually Oriented Business Regulations**

Michelle Anthony, Senior Planner, presented the Staff Report dated August 3, 2017. Ms. Anthony stated the City Attorney had informed Staff the Sexually Oriented Business Ordinance needed to be based on permitted uses rather than conditional uses, as there had been cases in the years since the original drafting of the ordinance which made it a necessity to do so.

Commissioner Wolfe stated she thought the Commission had determined there only needed to be a single property which fit the definition and the property did not even need to be for sale, there just needed to be one which could potentially allow the operation of a sexually oriented business. Commissioner Wolfe stated, in other words, the Commission was simply responsible for ensuring the ordinance did not result in zero potential properties, but it was up to the property owners to determine whether or not to sell or rent to these businesses. Ms. Anthony stated Commissioner Wolfe was correct.

Commissioner Wolfe inquired if the new update to the ordinance was spurred by the discussion in which business owners on Beckers Lane and Ruxton Avenue had with Staff regarding their concerns that their businesses and locations would be associated with a sexually oriented business. Ms. Anthony responded the revision was spurred by the City Attorney's recommendation to not move forward with the ordinance as it was under the current location standards and commented it was less messy to do so. Ms. Anthony stated if the Commission wished to recommend no change be made, they could do so in a recommendation to City Council.

Ms. Anthony briefly explained and went over the changes made to the ordinance and distance separation map since it was last reviewed by the Commission.

Chairman Delwiche inquired about the recent court cases which spurred the revision and asked if the Conditional Use issue had occurred in another municipality. Ms. Anthony responded because sexually oriented businesses were First Amendment Businesses, there was need to be careful about having too much discretion in reviewing them. Ms. Anthony stated the restrictions such as no alcohol and on hours of operation were fine, but unless the specific use was permitted as opposed to having been conditional, they could not be enforced.

**MOTION:**

Commissioner Wolfe moved to forward a recommendation to City Council for adoption of the revised Sexually Oriented Business Regulations.

**SECOND:**

Commissioner Simmons seconded the motion.

**DISCUSSION:**

There was no discussion regarding the motion.

**VOTE:**

Motion Passed, 7-0.

**NON-AGENDA ITEMS FOR DISCUSSION:**

Commissioner Casey inquired what the difference between a Variance and a Waiver was. Ms. Anthony responded a Variance had specific criteria for approval, whereas a Waiver was less strict.

Commissioner Wolfe inquired if the City had ordinances allowing for a Waiver. Ms. Anthony responded the City had a Subdivision Waiver and commented the State had legal definitions and criteria for a Variance. Ms. Anthony stated there could be criteria and standards set for a Waiver, but it allowed for more flexibility than the criteria for a Variance.

Commissioner Casey inquired when someone would be given a Waiver versus a Variance. Ms. Anthony responded the City did not currently have a Zoning Waiver, for example, and there was in fact nothing for a Waiver in the Zoning Code. Ms. Anthony stated the only thing the City had a Waiver for was the Subdivision Waiver which was used to allow property owners to build in no build areas of thirty percent (30%) or greater slope. Ms. Anthony commented the City could add more Waiver options to the Code, but it would need to be done through the ordinance process.

Commissioner Storm inquired if Staff had heard anything from the gentleman looking to split his lot on Sandra Lane. Mr. Burkholder responded Staff had not heard anything. Ms. Anthony stated the Attorney had advised Staff if the Applicant had appealed the decision, they would have supported the Staff Recommendation for the request which should not have been denied. Mr. Burkholder commented this was because the request legally met the requirements of the Zoning Code for each lot for a Minor Subdivision. Ms. Anthony stated because the request met the legal requirements, the Commission did not really have the discretion to deny it.

Chairman Delwiche inquired if the Waiver was more discretionary in terms of a determination than the Subdivision. Ms. Anthony stated the Waiver was more discretionary.

**VII. ADJOURNMENT**

Hearing no further business before the Commission, Chairman Delwiche adjourned the meeting at 8:32 pm.

*Minutes Prepared by Dylan Becker, Planner I*