



**CITY OF MANITOU SPRINGS
PLANNING COMMISSION
REGULAR MEETING MINUTES
July 11, 2018**



I. CALL TO ORDER and APPROVAL OF AGENDA

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 5:57 pm and declared a quorum present. The following Commission members attended:

PRESENT: Chair ALAN DELWICHE
Vice Chair JEANNE VROBEL
Commissioner MIKE CASEY
Commissioner JULIA SIMMONS
Commissioner GLORIA LATIMER
Commissioner LORI BURRIS
Alternate Commission WHITNEY LEWIS

ABSENT: Commissioner JULIE WOLFE (excused)

STAFF: Michael Davenport, Interim Planning Director
Michelle Anthony, Senior Planner
Dylan Becker, Planner I

GUESTS: Robert Todd, City Council Liaison

II. APPROVAL OF MINUTES

ITEM 1. June 13, 2018

MOTION:

Vice Chair Vrobel moved to approve the Regular Meeting Minutes of the June 13, 2018 Planning Commission Meeting, as presented.

SECOND:

Commissioner Burris seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 5-0. Commissioner Lewis and Chairman Delwiche abstained as they were not present for the June 13, 2018 Regular Meeting of the City Planning Commission.

III. NOTICE OF COUNCIL ACTION

ITEM 2. Ordinance Providing for Processing Bed & Breakfasts and Vacation Rentals, Clarifying Definitions and Minor, Associated Amendments to the Zoning Code. Review of the Ordinance is scheduled for the July 24 City Council worksession.

ITEM 3. Ordinance Correcting the Vacation of Rosemary Lane. The City Council vacated Rosemary Lane in December 2017 on the recommendation of the Planning Commission. The El Paso County Assessor contacted the Planning Department about only a portion of the platted width being vacated per the legal description provided in the application. Staff contacted the applicant and was provided a new legal description and submitted an ordinance correcting the vacation of the undeveloped right-of-way to City Council, which approved the first reading on June 5. Second Reading was scheduled for June 19 and was approved unanimously.

ITEM 4. Ordinance to Regulate Sexually-Oriented Businesses (SOBs). Consideration of this proposed Ordinance has been delayed. City Council has approved an extension of the moratorium to December 20, 2018. Staff will report when Council discussion regarding how they want to proceed in regard to regulating SOBs is scheduled.

ITEM 5. VAC 1801 – Vacation of Right of Way (Portion of Prospect Place) – 901 & 903 Prospect Place – Jay Rohrer and Karen Cullen, Applicants. The Planning Commission recommendation and the Vacation Ordinance were considered at the June 5 City Council Meeting and approved on First Reading by a vote of 6-0. Second Reading of the vacation ordinance was scheduled for June 19 and was approved unanimously.

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 3. MiCUP 1801 – Minor Conditional Use (Vacation Rental) – 312 Clarksley Road – Jeffrey Warren, Applicant

Michelle Anthony, Senior Planner, presented the Staff Report dated July 6, 2018.

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

Jeffrey Warren, 312 Clarksley Road, introduced his wife, Janet Warren, also 312 Clarksley Road, and stated he was amenable to the recommendations made by Staff, but would like to make some clarifications for the Commission regarding their proposal.

Mr. Warren stated he and his wife would be living at the proposed vacation rental and would not be renting to guests when they were not there themselves.

Mr. Warren stated there would be a maximum of four (4) guests and two (2) vehicles at any given time. Mr. Warren stated the plan was for he and his wife to park in the two-car garage and guests would park in the driveway which measured sixteen feet by twenty-five feet (16 ft. x 25 ft.) and could easily accommodate two (2) vehicles. Mr. Warren stated he and his wife intended to re-do the driveway and expand its dimensions prior to the operation of the vacation rental. Mr. Warren stated there was no on-street parking permitted by their guests.

Mr. Warren stated guests would not be permitted to invite their own guests to the vacation rental and guests would not be permitted to party on the property. Mr. Warren stated pets would also not be permitted for guests and the rental would also not be recreational marijuana friendly. Mr. Warren stated smoking of any kind would not be permitted on the property.

Mr. Warren stated they would have the evacuation and fire information posted in several locations around the property and would strongly enforce the City's quiet hours between 10:00 pm and 7:00 am. Mr. Warren stated the watering of his property was done in accordance with the City's current water restrictions and an official floor plan depicting the location of all fire extinguishers and carbon monoxide detectors would be submitted in accordance with the recommendation made by Staff and the City's Code. Mr. Warren stated the front yard would also be xeriscaped to further improve the appearance of the property and to reduce the fire risk, as well.

Mr. Warren stated he was aware of concerns in the neighborhood regarding traffic volume, noise, and general disruption of the residential neighborhood, but his experience with vacation rentals across the country had provided him evidence the opposite was actually true regarding vacation rental operations. Mr. Warren stated people who rented vacation rentals were people who wanted to see the world and spend money in that community.

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

Joseph Glass, 28 Karen Lee Lane, inquired if the property owner was to sell the property, would the Minor Conditional Use Permit transfer to the new owner. Ms. Anthony responded Minor Conditional Use Permits ran with the land, so if the new owner wanted to operate the exact same operation, they would be able to do so. Commissioner Burris commented the new owner would be required to operate the exact same operation under the exact same parameters.

Sean McKeown, 308 Sutherland Place, inquired if the alternate emergency contact in the event the owners were out of town was the number of someone who would be on-site during the time the owners were away or if it was just a number of someone they knew in the area who could show up on-site within a reasonable time frame. Ms. Anthony responded the City did not have regulation regarding this, but it may behoove the Commission to set some parameters on this in one of the conditions of approval. Chairman Delwiche commented the ordinance seemed to suggest the emergency contact had to at least be someone within the county. Ms. Anthony responded this was correct.

Mr. McKeown inquired if this condition regarding the emergency contact would transfer with the Minor Conditional Use Permit and the property should it ever be sold. Chairman Delwiche responded if the property was sold, the new owner could only utilize this Minor Conditional Use Permit if they intended to operate the exact same operation under the exact same conditions.

Mr. McKeown inquired what would happen should the new owners decide not to live on-site. Chairman Delwiche responded this permit required that the owners live on-site as part of its operation and, therefore, the new owners would be required to live on-site in order to operate under this Minor Conditional Use Permit.

Mr. McKeown stated it seemed to him, per the requirements, the owners could live off-site so long as they provided the contact information for someone located within the county. Ms. Anthony responded this contact was a back-up and/or emergency contact in the event of an absence of the owners, not the primary operators/owners themselves. Mr. McKeown commented there was nothing preventing the back-up contact person from becoming the de-facto operator just by continuing to provide his contact information. Commissioner Burris stated under the Code for this type of operation the owners were required to live on-site as a requirement of the Minor Conditional Use Permit. Mr. McKeown inquired what prevented the

scenario he just described from occurring. Ms. Anthony responded it would be a violation of the Minor Conditional Use Permit because this was not what had been applied for and ultimately approved, and should it be approved by the Commission, the City would enforce the Code in this regard which could result in a court appearance. Ms. Anthony stated the intention of this request and of the owners was to operate an owner-occupied vacation rental and any new owner/operator would be subject to the exact same conditions. Mr. McKeown commented he felt there was too much wriggle room in the Code in this instance.

Tim Russ, 309 Sutherland Place, stated he was not aware until he came to the meeting this evening the Applicants would be living on-site and there would be a limit on the number of guests permitted at any given time. Mr. Russ stated his main concern was the Minor Conditional Use Permit itself and what would happen if the Warrens decided to sell the property, as he understood these permits ran with the land.

Mr. Russ inquired if the conditions could be modified for this permit at a later date. Chairman Delwiche responded the owners, if modifying the operation in anyway, would be required to come before the Planning Commission for a new Minor Conditional Use Permit and would essentially be starting the entire process over again.

Mr. Russ asked for clarification if a new owner bought the property and decided they wanted to operate differently, they would be required to obtain a new Minor Conditional Use Permit. Ms. Anthony responded this was correct and the new owners would be required to go through the public notification, public hearing, and make all submittal requirements for a new permit. Ms. Anthony commented this did not mean they were guaranteed approval from the Planning Commission, however, as each application was evaluated individually on its own merit.

Mr. Russ stated he understood the financial opportunity for the Warrens and their desire to operate a vacation rental, but it was the neighbors who had to deal with any issues which arose. Mr. Russ stated there was also concern regarding new owners operating under the same permit because there was no way of knowing whether or not the new operators would do better or worse than the current owners.

Mr. Russ stated it was his understanding that if an issue arose the neighbors were supposed to call the vacation rental operators first, the police second, and finally to file a formal complaint with the City's Planning Department. Mr. Russ stated what he did not know was how many complaints had to be made to the Planning Department before the permit would be before the Planning Commission for revocation.

Mr. Russ stated his main concern was what would occur should new owners purchase the property, and therefore the operation, and was concerned the process to get a Minor Conditional Use Permit revoked was too clunky. Mr. Russ stated he felt the Warrens would be good operators, but was worried about future owners.

Commissioner Casey stated there was a phone line on the Planning Department webpage which was manned twenty-four (24) hours a day, seven (7) days a week specifically for vacation rental complaints. Mr. Russ stated he expected the process to be extensive and time consuming and worried about the time the neighbors would have to endure a bad operation before they could be seen by the Planning Commission.

Don Wallis, 23 Kris Lane, stated there were Home Owners Association covenants in Crystal Hills and inquired if those had been checked by the City and the Commission to see if this was in violation of those covenants. Chairman Delwiche responded covenants held by Home Owners Associations were a private matter and neither the City, nor the Planning Commission, had any authority over those covenants.

Mr. Wallis stated he had past experience with the Home Owners Association covenants regarding an individual who had parked a recreational vehicle in his yard which went to small claims court in El Paso County and which he had won. Mr. Wallis stated the City could not approve or permit anything which was in violation of those covenants and felt it would behoove the City and the Commission to look at those covenants because, according to the judge he had dealt with, they superseded everything else because they were lifetime covenants imposed on anyone who owned a home there. Mr. Wallis stated, in this particular case, he was able to get the recreational vehicle moved out of the front yard of a property in his neighborhood.

Mr. Wallis stated he was also concerned about the process for making complaints against vacation rentals and commented he had one operating across the street from him in which he had seen numerous recreational vehicles. Mr. Wallis inquired who was responsible for enforcing these issues and inquired if he had to become the police of that particular property. Mr. Wallis stated tonight was the first time he was aware there was a number he could call to file a complaint. Chairman Delwiche responded if there was a violation of the Minor Conditional Use Permit for a given operation, the appropriate process would be to contact the number listed on the Planning Department webpage or call the Planning Department and Code Enforcement Officer.

Vice Chair Vrobel stated similar issues had arisen at the last Planning Commission meeting regarding the process for making complaints against a vacation rental operation and, so long as the Planning Department was notified, and the Commission was notified, they would be happy to review an operation's Minor Conditional Use Permit. Vice Chair Vrobel commented if a police report was never filed and the Planning Department was never notified, there was nothing which could be done because the City was essentially unaware a problem existed and expressed the importance of filing an actual complaint with the City when there was an issue.

Mr. Wallis stated he was also concerned about traffic in the neighborhood due to the narrow streets and blind corners in Crystal Hills.

Mr. Wallis stated his main concern was the covenants enforced by the Home Owners Association and the Planning Department and Planning Commission needed to be aware of these covenants as they were law. Ms. Anthony responded the City was aware of the covenants in the Crystal Hills subdivisions, but the City had no ability to enforce those covenants and the determination of whether those covenants were still active was also not the City's responsibility.

Mr. Wallis inquired if there was a problem regarding the covenants, whether it was the responsibility of the residents under those covenants to enforce those covenants. Chairman Delwiche responded this was correct as it was a civil matter. Ms. Anthony again emphasized the City had no authority over covenants held by any Home Owners Associations within the City.

Mr. Wallis inquired if the City would approve something which they knew was in violation of these covenants. Ms. Anthony responded because the covenants were not up to the discretion of the City, the City could not withhold an approval based on those covenants. Mr. Wallis responded he felt the City would be approving something which was illegal and would likely be determined to be illegal in court. Chairman Delwiche responded Mr. Wallis would be taking the property owner to court, not the City, as this was a civil matter. Mr. Wallis stated the only reason he would have to take them to court was because the City was not enforcing the covenants held by the residents of Crystal Hills. Ms. Anthony responded the City Attorney had advised the City that it cannot enforce or consider private covenants. Chairman Delwiche

stated the Commission acknowledged Mr. Wallis' concerns, but the City had no legal authority to address those covenants.

Meg Goblet, 215 Crystal Hills Boulevard, inquired why Conditional Use Permits transferred ownership with the property as opposed to closing once new owners took over, thereby making the new owners go through the process as well. Ms. Anthony responded the City Attorney had advised the City these permits should run with the land, as they were tied to land use, and as long as the new operator was operating exactly the same as the previous owner, there was no reason they should not. Ms. Anthony also stated people sold their businesses all the time and this was no different than that, however, if there was any change to the operation, the new owners would be required to obtain a new Conditional Use Permit.

Ms. Goblet stated she was concerned new owners would not know all of the rules of the Conditional Use Permit they had purchased with the property and the neighbors would be the recipients of any issues which arose as a result. Ms. Anthony responded the City understood Ms. Goblet's concerns, but this was how the City was advised to handle these situations.

Ms. Goblet stated, as a frequent walker, she was also concerned about the increased traffic to the neighborhood and about guests driving while under the influence of marijuana.

Ms. Goblet stated she had often seen three or four vehicles parked outside of the Warren's residence on a daily basis and was concerned about the operation having the ability to accommodate guest parking as well.

Commissioner Casey inquired if someone purchased the property from the Warrens, if the new owners would be required to obtain a new Conditional Use Permit. Ms. Anthony responded they would be required to obtain a new business license, but not a new Conditional Use Permit so long as they were operating exactly the same as the previous owner. Ms. Anthony also stated the conditions of approval were always recorded into the written minutes and were accessible to the public through the Planning Commission and City Council webpages.

Steven Dunham, 215 Crystal Hills Boulevard, inquired if this building had been reviewed regarding code as he knew many of the older homes in the City did not meet current code regarding ingress and egress. Ms. Anthony responded that unless there was actually work being done on a property, there was nothing in the Code which required those upgrades to be made and this was not considered a change of occupancy.

Tina Vidovich, 313 Sutherland Place, stated she was concerned that allowing vacation rentals to proliferate in Crystal Hills would degrade the neighborhood and she was aware of the two percent (2%) cap on the number of operations permitted at any given time in the City. Ms. Vidovich stated due to the less dense neighborhood of Crystal Hills, she felt it was a more desirable neighborhood in which to operate a vacation rental and she had calculated that if fifty-nine (59) vacation rentals were permitted to operate within the City, and there were currently forty-four (44) in operation currently, there were fifteen (15) slots available which could be permitted at any time. Ms. Vidovich inquired if these remaining vacation rentals would all be in Crystal Hills, as she was concerned this was the intent, or if these operations could be permitted anywhere within the City. Ms. Vidovich also commented she was concerned that only permitting the remaining vacation rentals in Crystal Hills would erode the residential fabric of the neighborhood and could prove disastrous if these operations had high turnover in terms of ownership. Chairman Delwiche responded the Commission was guided by what was written in the Code and the City had gone through a year-long process to establish the vacation rental ordinances.

Chairman Delwiche commented the Commission was not permitted to weigh in on the quality of life in a neighborhood and could only review a request based on what was written in the Code. Ms. Vidovich responded there was nothing in the ordinances which would prevent those fifteen (15) remaining vacation rentals from being permitted in Crystal Hills. Ms. Anthony responded the five-hundred foot (500 ft.) separation distance applied to all zones in the City and was actually uncertain the City would ever reach the two percent (2%) threshold because of that regulation. Ms. Anthony stated there were currently five (5) vacation rentals operating in Crystal Hills and, based on the separation distances, there was only room for a few more.

Tammila Wright, 227 Plainview Place, stated she wanted to explain to the Commission her experience with two (2) vacation rentals in her neighborhood, one of which claimed to be the number one party house in their advertisements of the rental. Ms. Wright stated although her experience with this particular rental was negative, her experience with the other rental was a positive one and commented she felt there was a balance to be had. Ms. Wright stated when an operation was run badly, it was detrimental to the entire neighborhood.

Janet Warren, 312 Clarksley Road, inquired if it was possible to rescind the Business License or Conditional Use Permit should they decide to sell the home. Ms. Anthony responded if at any time the owners wanted to give up their permit, they were permitted to do so willingly as a means of preventing the permit from transferring ownership.

Chairman Delwiche inquired how long the period of inactivity would be for a Conditional Use Permit to expire. Ms. Anthony responded operators were required to obtain and renew a Business License annually with the City and as long as the rental was being rented the twenty-one (21) calendar days a year, it was considered active. Ms. Anthony stated if those conditions had not been met, there would be issues with the renewal, as they would be in violation of the Conditional Use Permit.

Ms. Warren stated it was their intent to relinquish their Conditional Use Permit when and if they sold the property and also did not intend to operate for a prolonged period of time. Ms. Warren stated she and her husband were simply looking for a fun project and a means of bringing in a little extra income now that they had the extra space and expense of sending their children off to college.

Commissioner Casey stated he felt it was a bit odd the Warrens were trying to create the possibility for more than one (1) family or group at a time and inquired if they would be amenable to a condition which limited the rental to one (1) group or family at a time. Ms. Warren responded she thought that was what she and her husband were proposing. Mr. Warren commented he felt it would be fair to add this as a condition and was amenable to the idea.

Mike Vidovich, 313 Sutherland Place, stated the Warrens had agreed they would not allow pets or smoking of any kind on the property and inquired if this could be added to the conditions of approval as he did not see it formally stated in the Staff Report. Ms. Anthony responded the Commission could add this to the conditions if they desired and the Warrens had also stated this into the Public Record.

Mr. Vidovich stated he did not agree or think the integration of vacation rentals into these neighborhoods was appropriate.

Jim Reed, 129 Palisade Circle, inquired if service animals would be permitted because ADA requirements took precedence over local law. Chairman Delwiche responded the City did not maintain any control over ADA requirements and service animals would need to be permitted to be brought by guests.

Mr. Russ, 309 Sutherland Place, stated he understood the manner in which someone's words went into the Public Record, but felt the only way to make them actually legal was to include them in the written conditions of the approval.

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

Vice Chair Vrobel stated she had driven by the proposed vacation rental and noted, regarding parking in the driveway and garage, there seemed to only be room for one (1) car in the garage as the remaining space was filled with the owners belongings and the driveway also looked too narrow to accommodate more than one (1) vehicle. Vice Chair Vrobel acknowledged the Warrens had stated they were going to replace the driveway and felt it may be a good idea to not allow operation of the vacation rental until this had been achieved or to limit the guests to one (1) interested party in one (1) vehicle.

Vice Chair Vrobel stated she was also concerned about allowing two (2) or more disinterested parties to rent at one time in regard to tandem parking in the garage and driveway as she felt this could be a logistical challenge for the owners, as well as guests.

Vice Chair Vrobel stated, per the request of the Applicants, she would also like to include in the conditions of approval that the Conditional Use Permit would not run with the land or transfer ownership in the event the Warrens decided to sell the property.

Commissioner Simmons stated she felt Ms. Anthony had essentially stated the City Attorney had advised against placing such a condition on the approval and inquired if this was correct. Ms. Anthony responded she thought it was better if the Applicant had stated this into the record as part of their request, but was not a very good idea to impose otherwise.

Commissioner Latimer stated she would like to add the condition that neighbors within five-hundred feet (500 ft.) of the vacation rental be notified of the procedures and process for filing a complaint regarding the rental operation.

Commissioner Burris inquired, regarding guests and on-street parking at the property, how many vehicles would end up parked on the street and if the Commission should include a condition which limited the number of vehicles which could be parked on the street.

Commissioner Casey stated he felt the parking situation brought to light by Ms. Anthony was important and the vacation rental ordinance which the City had passed stated that all vehicles must be parked on-site and off the street.

Commissioner Simmons inquired if street parking in Crystal Hills was public parking. Ms. Anthony responded this was correct for all properties in the City.

Commissioner Casey stated he felt it was a good idea, given the neighborhood opposition to this request, to limit the number of guests to one (1) interested party.

MOTION:

Vice Chair Vrobel moved to approve MiCUP 1801 for operation of a short-term vacation rental at 312 Clarksley Road with the following conditions:

1. A maximum of up to four (4) guests from a single rental party are allowed at any one time in no

- more than two (2) vehicles.
2. All advertisements and/or listings for the vacation rental must contain the approval number (MiCUP 1801) and copies of advertisements and/or listings must be submitted to the Planning Department for retention in the property file. The advertisement(s) and postings shall also note guests must not arrive in more than two (2) passenger vehicles and the property cannot accommodate oversize vehicles, RVs, campers, or trailers and the rooms will not be rented to guests who arrive in these types of vehicles.
 3. The required fire extinguishers shall be provided and the locations for these will be shown on a revised site plan, which will be submitted for the Planning Department's file.
 4. A guest notice complying with 18.89.040.G (1-7) shall be submitted to the Planning Department for review and approval shall be provided prior to issuance of a City Business License.
 5. The owners may not schedule guests during any time they will be unavailable for more than 24 hours, or are required to provide an additional emergency contact who will be available during any such periods.
 6. The owners must obtain a business license from the City of Manitou Springs and the required tax licensing prior to listing the property for vacation rental operation.
 7. As stated by the property owners, the vacation rental will not accept pets and there shall be no smoking of any kind (tobacco or alternative substances) on the property; this information shall be provided in advertisements and information supplied to potential guests and persons who have made reservations.
 8. The property owners stated that they do not intend for MiCUP 1801 to be transferred with any sale of the property and shall relinquish this approval and the City business license in the event 312 Clarksley Road changes ownership.
 9. The property owners shall notify neighbors within 500 feet of a contact phone number and procedures for filing a complaint with the City of Manitou Springs prior to operation of the vacation rental.
 10. Prior to issuance of the business license for the vacation rental use, the property owners shall provide an improved, expanded driveway parking area to allow for at least two, off-street parking spaces on-site for guests in addition to the garage.

SECOND:

Commissioner Latimer seconded the motion.

DISCUSSION:

Commissioner Lewis stated she was uncomfortable with modifying the regulations by adding the additional three-hundred foot (300 ft.) notification requirement as it could set a precedent going forward.

Commissioner Simmons responded she had the same thought initially, but this was a separate notification to neighbors of their recourse should a problem arise with this vacation rental operation, so this was not related to the public notice requirement in the Code, but was as a condition of this approval.

VOTE:

Motion passed, 7-0.

ITEM 4. MiCUP 1803 – Minor Conditional Use (Vacation Rental) – 417 Washington Avenue – Kathy E. Eans, Applicant

Michelle Anthony, Senior Planner, stated prior to reading the Staff Report for MiCUP 1803, she wanted to clear up whether or not the Commission would allow the parking requirements to be satisfied by Residential Permit Parking and whether the Commission would approve a vacation rental with no off-street parking, as this was the case for this request. The Commissioners responded in agreement.

Ms. Anthony stated she had included two (2) sections from the Code in the Staff Report for MiCUP 1803 regarding off-street parking. Ms. Anthony stated one section she had highlighted pertained to off-street parking requirements for development and the other referred to the requirement that all parking be off-street for vacation rental operations.

Ms. Anthony stated she would like to have this more clearly stated and defined in the Code.

Commissioner Casey stated the vacation rental ordinance flatly stated all parking was required to be on-site. Ms. Anthony responded the way she had interpreted the matter was the parking requirements changed depending on what was approved by the Commission and she just wanted clarification from the Commission this was accurate.

Chairman Delwiche stated in other scenarios, if the Code stated a request needed off-street parking and the property was unable to accommodate this, the Applicant would typically apply for a Parking Variance. Ms. Anthony responded this was difficult to achieve with a Conditional Use Permit because the conditions were utilized to make up for any deficiencies in the requirements. Ms. Anthony stated it did not make sense to have an Applicant go for a Parking Variance when there was a Conditional Use Permit.

Chairman Delwiche stated he thought he had remembered approving a vacation rental operation in the Downtown Zone without any on-site parking. Ms. Anthony responded this scenario had arisen a few times up to this point and, prior to the regulations, the City saw very few vacation rental or bed and breakfast operations which did not have off-street parking.

Vice Chair Vrobel stated it was her understanding that if an Applicant did not have off-street parking, the request did not meet the intent and purpose of the Code and would therefore be denied.

Commissioner Simmons stated her neighborhood was Residential Permit Parking and she had no off-street parking for her property. Commissioner Simmons stated this meant the few spaces in front of her property were her personal parking spaces and inquired if this would prevent any transient vacation rental operations from springing up. Ms. Anthony confirmed this. Vice Chair Vrobel commented she recalled discussion about certain areas of the City which barely had enough parking for tenants and residents, much less for there to be additional vehicle and parking congestion caused by guests.

Ms. Anthony stated she was gathering the Commission would not approve a vacation rental operation without on-site parking. The Commissioners agreed. Ms. Anthony stated she did not feel it was worthwhile to hear the following Application as it would be denied based on the fact there was no off-street parking for the property.

Michael Davenport, Interim Planning Director, stated it was not legal to determine the outcome of a hearing and, unless the Applicant formally withdrew the request, it would need to be heard by the Commission.

Kathy Eans, 417 Washington Avenue, stated she understood and appreciated the regulations the City had pertaining to vacation rentals and stated she would like to formally withdraw her application for MiCUP 1803.

Commissioner Casey inquired if the Applicant was aware she could rent her property for longer than thirty (30) days. Ms. Eans responded she was aware of this and thanked Ms. Anthony, Mr. Becker, and the Commission for their time spent on her request.

Commissioner Casey stated when the ordinance was written, he was told by a local resident that once an ordinance was passed, it was rarely changed but felt that, although the City had done a good job, it was wise to fine tune it. Ms. Anthony responded the Commission could discuss it at the end of the meeting.

APPLICATION FORMALLY WITHDRAWN BY THE APPLICANT. NO ACTION TAKEN ON BEHALF OF THE PLANNING COMMISSION REGARDING THIS REQUEST.

V. NEW BUSINESS

ITEM 4. SW 1801 – Subdivision Waiver (Encroachment into No Build Area) – 2 Keithley Place – Jerry Peterson, Architectural Concepts, on behalf of Elizabeth Crawford, Owner

Michelle Anthony, Senior Planner, presented the Staff Report dated July 6, 2018.

Commissioner Latimer inquired, in regard to Condition One, if Staff was considering the plans, marked as preliminary, as the actual plans. Ms. Anthony responded the actual building plan was preliminary, but the site plan would not be altered once approved by the Planning Commission and City Council.

Commissioner Latimer inquired if the site layout would be the same as what was presented. Ms. Anthony confirmed it would be the same and reiterated the site plan would remain unchanged, but the construction plans may be slightly altered upon final submittal.

Commissioner Simmons stated the Commission had an engineered site plan presented to them for this request and inquired if the architect had performed a preliminary geologic hazards study. Ms. Anthony responded she was unsure whether or not this had been performed.

Commissioner Simmons stated this was important because it would be used for mitigation of potential loss of life or property. Ms. Anthony commented it generally informed the property owner whether or not their intentions for the property were suitable and, if any geologic hazards were identified, what they can do to mitigate those hazards. Ms. Anthony stated beyond the geologic hazards report, the City was also asking for an erosion and drainage report in order to prevent the property from having any severe impacts on surrounding properties in terms of drainage and run-off.

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

Jerry Peterson, 3750 Penny Point, Colorado Springs, stated the house design had remained within the same footprint as the previous approval and he would like to make an exterior change to what had been presented in the plans, which was an additional man door adjacent to the garage doors with a small patio seating area. Mr. Peterson stated the interior had been modified from the original proposal, but would not impact the exterior footprint or design. Mr. Peterson also stated the plans had also been altered so there were only two (2) columns in the No-Build Zone, as opposed to the five (5) columns in the original plans, and the log cabin design had remained unchanged.

Mr. Peterson stated they were under contract with Doug Page of PCI Builders out of Woodland Park to perform a geological, drainage, and erosion studies.

Ms. Anthony inquired if the changes to the patio would extend beyond the deck area. Mr. Peterson responded it would not. Ms. Anthony commented the two (2) posts for the deck were the farthest extension of the construction. Mr. Peterson commented there was a small amount of deck which would overhang the posts slightly and the patio underneath the deck was actually smaller than the footprint of the deck itself.

Doug Page, 613 W. Midland Avenue, Woodland Park, stated he was the engineer hired by Mr. Peterson and he had enlisted the help of an expert to aid in the soils and geologic study of the property. Mr. Page stated he was currently looking into installing small landscape features and small detention features located at the roof downspouts in order to retain any additional run-off created by the construction. Mr. Page stated he would implement best practice designs and methodology with some silt fence, wattles, straw bails, or anything else which needed to be done on-site to control the water on the property.

Elizabeth Crawford, 16820 Oakview Drive, Los Angeles, California, stated she was the owner of the property and she also had intentions to improve the Keithley Road and Keithley Place roadways, as they were currently an axle-breaker and in very poor condition. Ms. Crawford stated she was interested in improving the area for the surrounding properties as well and had asked for the moon in terms of the erosion and runoff control on the property so as not to cause any malice between the neighbors. Ms. Crawford stated in Los Angeles, the stormwater regulations were incredible and any construction or addition to a property required that one-hundred percent (100%) of the stormwater be contained and treated on site to a drinkable standard prior to releasing the water back into the system.

Ms. Crawford stated she was more than willing to go above and beyond the requirements for construction on this property and she had budgeted all of the extra improvements which would also benefit the surrounding property owners.

Hearing no further questions for, or comment from, the Applicant, Chairman Delwiche opened the Public Hearing for public comment. Hearing none, the meeting continued.

Tamilla Wright, 227 Plainview Place, stated her property was located directly north of this property which received a majority of the erosion debris and stormwater runoff from this property. Ms. Wright stated when her father had first purchased the property, the road had already been cut and the amount of water which came down was unbelievable. Ms. Wright stated her father had gotten together with the City and had cut a trench in an attempt to direct the flow of water away from the house.

Ms. Wright stated nine years (9 yrs.) ago, Eleven Mile Development had purchased this property and claimed they would be performing public improvements to help mitigate some of the issues faced by surrounding properties. Ms. Wright stated this development company had installed metal drainage culverts which drained directly onto her property and the damage they had incurred was nothing short of astonishing.

Ms. Wright stated she did not have flood insurance at the time and had, therefore, tried to file a lawsuit against this company. Ms. Wright stated it was at this time that the developer disappeared and she had no recourse. Ms. Wright stated it was this incident which inspired her to join the Historic Preservation Commission so she could be aware of any development which occurred on this property. Ms. Wright stated she was very pleased to know that the Planning Department and Planning Commission were requiring the geologic, soils, and erosion studies, as she felt they were greatly needed in order to avoid and prevent any further damage to her property from the development of this one.

Erick Wright, 227 Plainview Place, stated the same architect who had worked on this proposal nine years (9 yrs.) prior with the Eleven Mile Development Company was the same architect which was working on this request which was a concern for him. Mr. Wright stated he had been on the telephone with the Federal Emergency Management Administration regarding what he could do to protect his property from the development of this property. Mr. Wright stated he wanted to see the geologic, soils, and erosion studies performed on this property and for this development because, historically, there was no place for all of this water to go as it ran down the road.

Mr. Wright stated he was baffled why the City would allow any construction in No-Build Areas, let alone the two (2) posts in this request.

Mr. Wright stated there was a strip of land owned by the City of Manitou Springs between his property and the property in question and if the strip of land owned by the City flooded, he flooded. Mr. Wright stated due to this, not only was the other property owner liable, but so was the City for damages incurred on his property and stated there would be a lawsuit if these issues were not alleviated.

Mr. Wright stated he was also concerned about the weight of the structure on the hillside and hoped the geologic study would show the potential negative outcomes of constructing this building as he believed the soils to be so unstable it could cause further soil creep onto his property. Mr. Wright stated in addition to the geologic, soils, erosion, and water runoff studies, he would also like to see a Phase I plan done for the project to show the neighbors how these issues would be mitigated or alleviated.

Ed Koback, 3 Keithley Place, stated he was concerned about the height of the proposed structure as it was likely to block his view of the surrounding mountains and Garden of the Gods. Mr. Koback urged the Commission to adhere to their own guidelines.

Doug Edmundson, 15 Keithley Road, stated there were a lot of concerns regarding this project given its history and felt the addition of two-thousand square feet (2,000 ft²) of impervious surface would only further exacerbate the runoff issues. Mr. Edmundson stated when Keithley Road was constructed in the 1940s, five (5) culverts were installed which had since fallen into disrepair following the death of his grandfather and great grandfather. Mr. Edmundson stated the upper three (3) drainage culverts were blocked and the lower two (2) were managed and maintained by him.

Mr. Edmundson stated he had deliberately let Keithley Road fall into disrepair as means of keeping people out of the area and he would like to see further enhancements to the site plan. Mr. Edmundson stated he was also concerned about this request being pushed through when there were numerous issues to be addressed.

Mr. Edmundson stated, for the reasons he had just mentioned, he would like to see this request postponed until further study was performed and the Historic Preservation Commission had rendered its final decision regarding the construction.

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

Chairman Delwiche inquired if the Applicant would like to respond to the neighbors.

Ms. Crawford stated she felt a few of the comments which were made could be assuaged away with some clarifications and reminded the neighbors the developer from nine years (9 yrs.) prior was hired by a

different owner. Ms. Crawford stated the first step she had taken when purchasing this property was to visit the Planning Department and had inquired what, if anything, had changed since 2009 she needed to be aware of. Ms. Crawford also stated she had requested all of the requirements for developing this property before anything else in order to alleviate the concerns of the neighbors and alleviate the issues they faced as a result of the abandoned construction nine years (9 yrs.) prior.

Ms. Crawford stated she had been informed, at that time, Ms. Anthony's main concerns regarding this property were hillside construction and the drainage of runoff from the property and she had spent a majority of the time discussing those topics alone.

Ms. Crawford apologized to the neighbors for what had occurred with the previous owner and abandoned development, but she had every intention of completing the project with public improvements to the drainage and roadways. Ms. Crawford also commented, the old drainage which was in disrepair, was in place whether she built her house or not and felt her request was beneficial to the neighbors because it would mitigate the very problems the Commission was hearing about. Ms. Crawford stated if this hill was already wreaking such havoc on the neighborhood below, she wondered why the neighbors would be so opposed to a solution and willing partner in mitigating those issues.

Ms. Crawford stated the current runoff issues were caused by the natural land and slope of the hill and not the result of the abandoned construction. Ms. Crawford further stated the soil creep issue would also be mitigated and lessened because the construction of her house on this property would be anchored into the earth using large pylons thereby helping to stabilize the area.

Ms. Crawford stated all of the historical tracts would be protected and everything she had done regarding the design and improvement of the property was designed to not impact historic trees or wildlife. Ms. Crawford stated she was also constructing a large retaining wall and the building height had been lowered to within five inches (5 in.) of the requirement, down from having been three feet six inches (3 ft. 6 in.) over the requirement.

Ms. Crawford stated the viewsheds and view rights of surrounding property owners should not infringe on her right and ability to construct a home on her property and she and her team were doing everything they could to assuage the concerns of the neighbors.

Commissioner Casey inquired how the Applicant would be effected if the request were to be postponed. Ms. Crawford responded she did not understand why it was necessary and was concerned further delay could further gum up the project with the neighbors. Commissioner Casey commented the reason he would like her to consider the postponement was due to the fact the Commission was not made up of experts and, therefore, had no idea the potential problems with drilling into and excavating the hillside. Commissioner Casey inquired if Ms. Crawford would be adversely impacted if the Commission wanted more information regarding the property prior to delivering a recommendation to City Council. Ms. Crawford responded she was perfectly fine with this and felt it could potentially bundle everything up into a nice package.

Vice Chair Vrobel inquired if the Commission could postpone the request. Ms. Anthony responded the Commission could do so in order to see the engineer's recommendations which could impact the construction in the No-Build Area. Ms. Anthony stated she felt it was more important to resolve these issues than it was to protect the No Build Area.

Ms. Anthony stated the Commission was actually in a better position to obtain the geologic, drainage, erosion, and soil reports under this proposal and under the Subdivision Waiver than if no waiver was being requested, as the Planning Department and the Planning Commission would have no way of requiring them.

Commissioner Casey inquired if what Mr. Edmundson had brought up regarding a piece of City owned property between this request and the neighbors' properties was true and if the City did own that piece of land. Ms. Anthony responded there was some City property located on the other side of Keithley Road which went down to either Plainview Place or Crystal Park Road and there may be drainage across that property, but none of this development was located on the City's property.

Commissioner Simmons stated the Commission needed to only focus on the request at hand, which was the encroachment into the thirty percent (30%) or greater slope by two (2) columns. Ms. Anthony responded there was also the issue of the retaining wall and the drainage of the property.

Commissioner Latimer stated she felt it was best to postpone the request until the geological hazards report had been completed as she was now aware of how complex and pervasive the existing issues were.

Chairman Delwiche commented the Commission was not able to require the geologic hazards reports without approving the Subdivision Waiver request. Ms. Anthony responded this was accurate and suggested the Commission make a recommendation for approval with the caveat the owner provide the reports prior to the request going before City Council with the recommended approval from the Planning Commission.

Vice Chair Vrobel inquired if the Commission approved the request with a recommendation to City Council, they would only need to add the requirement for the reports to be completed and reviewed prior to the request being heard by City Council. Ms. Anthony responded this was correct and would provide the final information to City Council to have everything they could need to render a final decision.

Commissioner Casey inquired if all options had been explored regarding the two (2) columns in the No-Build Area. Ms. Anthony responded this was the proposal presented to the Planning Department and she had not had any discussions with the Applicant regarding an alternative orientation. Ms. Anthony commented, as far as she was able to tell, there was nowhere for the building to be relocated or reoriented given the footprint of the structure and the topography of the lot.

Commissioner Casey inquired if the geologic hazard reporting could have an impact on the proposed retaining wall on the property. Ms. Anthony responded the reports would be looking at what was proposed on the site and their feasibility given the geology, soils, and drainage and would make recommendations.

MOTION:

Vice Chair Vrobel moved forward a recommendation to City Council for approval of SW 1801 for encroachment into the no-build zone as presented in the Site Plan dated May 11, 2018 at 2 Keithley Place with the following conditions:

- 1) Encroachment into the no-build area of the two deck columns and retaining wall structure as shown on the site plan appearing on the building plans dated 5/11/2018 is allowed.
- 2) Prior to issuance of the Property Improvement Permit for construction of the new home, the property owner will submit a Geologic Hazards Report by a qualified Geotechnical Engineer that identifies and addresses any geologic hazards on the property, confirms the land is suitable for the proposed development, and makes recommendations regarding drainage and erosion controls in order to avoid the creation of any detrimental impacts on the road or private properties downhill from the site.

- 3) Drainage and erosion controls, or any other property stabilization measure necessary for the benefit of this property, the adjacent road, or private properties downhill from this site, and which must be located within the No Build area, are allowed.
- 4) Applicant must submit the Geological Hazards Report to the Planning Department for review prior to the request being forwarded to City Council.

Staff further recommends the following finding:

- A) The exceptional topographical condition and irregular lot configuration places an unnecessary hardship on the owner, and the No Build encroachment as proposed, or found subsequently necessary by a Geotechnical Engineer will not be detrimental to the public good or impair the intent and purpose of the subdivision regulations.

SECOND:

Commissioner Latimer seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 7-0.

VI. OTHER BUSINESS

There was no Other Business to discuss

NON-AGENDA ITEMS FOR DISCUSSION – MISCELLANEOUS:

Commissioner Simmons stated her concern pertained to the Vacation Rental Ordinances and she would like to discuss the matter.

Commissioner Burris stated she felt the Commission should look over the current ordinance and consider a revision regarding the process for filing a formal complaint against a vacation rental property with the City and making a requirement that all operators be required to notify all surrounding properties within five-hundred feet (500ft.) of the vacation rental operation. Vice Chair Vrobel commented this was also mentioned at the previous meeting of the Planning Commission.

Commissioner Burris stated the other thing the Commission needed to clarify was whether or not off-street parking was permissible for a Minor Conditional Use Permit. Ms. Anthony responded in agreement and commented she felt better clarification was beneficial to the City. Ms. Anthony also suggested bringing back the Residential Lodging Ordinance which was reviewed by the Commission a few meetings prior with a recommendation for approval to City Council and include these adjustments as part of the new ordinance. Ms. Anthony stated the Commission would have to review the updated ordinance and make a new recommendation to City Council, but felt this was the most streamlined and efficient way of handling the recommended alterations.

Commissioner Burris stated she would also like to better clarify how vacation rentals were counted towards the two percent (2%) threshold and whether or not each individual unit would be counted or if each property would be counted. Vice Chair Vrobel commented it seemed like each Commissioner interpreted it differently and it would be beneficial to clarify this. Ms. Anthony commented if each unit was counted

individually, the City would already be over the two percent (2%) threshold of fifty-nine (59). Chairman Delwiche inquired if each unit was counted individually, if there would be any change to the maximum threshold. Ms. Anthony commented there would be no change and the threshold would remain at fifty-nine (59) because this number was based on the number of residential structures in the City. Commissioner Burris commented the City would then be maxed out on vacation rental operations and would not permit any more until there was availability.

Chairman Delwiche commented he thought the threshold number was based on the number of properties, not the number of residential structures. Ms. Anthony responded it was based on the number of residential structures based on 2016 data and she would also like to refine the parking portion of the ordinance as well.

Chairman Delwiche stated he would like to see more hones on Applicants which were going to bring in more traffic to a neighborhood and require the owners to also park their vehicles on-site and off of the street. Ms. Anthony stated she would look into the impacts of this.

Vice Chair Vrobel commented she felt the Commission's original intention regarding this ordinance was solid, but over the years, had learned where the holes and gaps were.

Chairman Delwiche stated he would like to Commission to recognize and understand the current ordinance was one of the best in the country and envied by municipalities everywhere. Ms. Anthony stated the Planning department had received communications from municipalities all across the country wanting to see our ordinance and asking for advice and experience with the regulations. Ms. Anthony stated the Planning Department had been informed by many of these municipalities they felt our City's regulations were one of the best they'd come across.

Michael Davenport, Interim Planning Director, stated he would look into making a list of possible amendments to be made to the regulations.

Commissioner Casey inquired if everything on the application needed to be in the ordinance. Ms. Anthony responded everything the City wished to be required in an application did need to be in the ordinance. Mr. Davenport commented it would make the City's position easier to defend should it ever be challenged in court.

Commissioner Casey inquired if the Commission should review the application forms as well. Ms. Anthony responded the City had an application packet and form for each individual type of request and the submittal checklist was essentially pulled directly from the ordinance. Ms. Anthony stated when the revisions were made and adopted, the Planning Department would revise the submittal checklists to conform to the ordinance.

Commissioner Latimer inquired if there would be a Public Hearing regarding these amendments to the ordinance. Mr. Davenport responded any amendment would require a Public hearing process.

Commissioner Latimer inquired if this would also require Public Notice and Posting. Ms. Anthony responded the City did post Public Notice in the Pikes Peak Bulletin for ordinances, along with the applications/requests, but this had not always been the case in the past.

Commissioner Latimer inquired if the hearings would be held in the Historic Preservation Commission or the City Planning Commission. Ms. Anthony responded Public Hearing would be held with both Commissions and on to City Council for final approval.

Chairman Delwiche inquired how many City Council Hearings would be required. Ms. Anthony responded there would be two (2) Public Hearings with City Council, although it could potentially take three (3) meetings.

Commissioner Latimer inquired why City Council had extended to moratorium on Sexually Oriented Businesses, because she felt, if there were concerns regarding the ordinance, the Planning Commission should know about it. Ms. Anthony responded there were some concerned neighbors in the Beckers Lane neighborhood who, with the help of an attorney, had submitted a document which suggested not allowing Sexually Oriented Businesses to operate within the City at all or regulating them out of the City entirely through the Zoning Code. Ms. Anthony stated there was an upcoming Executive Session with City Council and the City Attorney to discuss the matter and any proposed regulation which came out the session would be forwarded on to the Planning Commission.

Chairman Delwiche inquired if “zoning them out” meant using City Zoning Code to effectively block these establishments from operating in certain zones. Ms. Anthony responded the Planning Commission had essentially done so by narrowing the available locations down to a single parcel or couple of parcels and had met what had been stated by the City Attorney as legal.

Ms. Anthony stated one of the examples cited in the document was Tulsa, Oklahoma where an Industrial Zone had been created in the Zoning Code to permit uses like Sexually Oriented Businesses, but there was no actual Industrial Zone within the city limits. Vice Chair Vrobel stated it sounded like a lawsuit to her. Ms. Anthony commented if this was the route City Council wanted to take, then it was the route the City would take, but Staff and the Commissions needed some direction before anything was drafted.

Chairman Delwiche commented the scary part of this to him was, if there was a lawsuit regarding this, it would not just be a loss of money, but it could potentially cause a proliferation of these businesses everywhere. Vice Chair Vrobel stated she agreed and the City needed to be very careful.

Commissioner Latimer inquired if there was an update regarding the permanent Planning Director position. Ms. Anthony responded the City had only received eighteen (18) applications from the original job posting and the City had decided to repost the position. Ms. Anthony stated there was some sort of miscommunication regarding the original posting and it was not posted with the American Planning Association, which was why the City had received so few applicants. Ms. Anthony stated the second posting was posted in both the Colorado Chapter and at the National level with the American Planning Association and several other planning related sites. Mr. Davenport commented there would be a thirty (30) day period in which the posting was open and would close in mid-August. Ms. Anthony stated her best guess was it would be October or November before the position was actually filled.

Ms. Anthony stated the new City Administrator would also start on August 27, 2018.

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