

**CITY OF COLUMBIA FALLS
COLUMBIA FALLS BOARD OF ADJUSTMENT MINUTES
HELD NOVEMBER 17, 2020**

CALL TO ORDER and Roll Call:

Chairman Newman called the meeting to order at 6:00 p.m. with roll call as follows:

PRESENT: Mark Johnson, Olaf Ervin, Steve Marquesen, Roger Newman, Barb Riley

ABSENT: Alida Wright

Also Present: City Manager Susan Nicosia, Planner Eric Mulcahy, and Public Works Clerk Alex Vissotzky. City Attorney Justin Breck attended via Zoom.

VISITORS/PUBLIC COMMENT (Items not on the agenda): None.

NEW BUSINESS:

Variance Request – Minimum Lot Width

Chairman Newman read the variance request to minimum lot width. This variance would allow the owner, Clara Craft, of 949 Tamarack Lane to divide her nine-acre parcel into two tracts, one being a one-acre tract of land to give to her daughter, applicant Hanna and Nick Miller, through the Family Transfer survey process. The property is zoned CR-1 which has a one-acre minimum lot size as well as a minimum lot width of 150 feet. The applicant's stated reason for the variance request is that the drainfield for the existing house and an existing fence create an obstacle and hardship to comply with the required 150-foot lot width, providing only a 135-foot width for the one-acre parcel. The property is described as Assessor's Tract 2Q (Tract 1 of COS 18119) in Section 5, Township 30 North, Range 20 West, P.M.M., Flathead County.

Planner Eric Mulcahy presented Staff Report CV-20-01 to the Board, reviewing each of the 8 findings and recommended approval. Chairman Newman asked the Board if they had any questions for Eric. Newman asked if the applicant could develop elsewhere on the property. Mulcahy confirmed that would be possible but other sites would require extensive grading, tree clearing and driveway development. Mulcahy noted that the owner selected the location and it is also a good site for the septic. Riley referred to page 13 of the packet, questioning existing driveway and additional easements. Mulcahy stated there would be one small additional easement on the subject property. Newman asked how substantial is the fence? Mulcahy noted it was a pasture fence, not very substantial.

Chairman Newman opened the public hearing for public comment at 6:10 p.m.

Nick Miller, 949 Tamarack Lane, Applicant. Mr. Miller noted that he was in favor of the variance and it will make the family transfer process go more smoothly if granted.

Chairman Newman commented that the ear of land west of the proposed property could be an issue and he would like to see the property squared off; if done properly it could buffer the well and drain field area. Miller said he thought it would encroach on the drain field but he had no issue with squaring it off. Riley concurs that if the land was squared off; it would have better future land use.

Chairman Newman noted that the Board received one written comment from a neighbor concerned about this variance paving the way for additional lots. Mulcahy stated they misunderstood the variance request and it is not applicable. Nicosia said if the applicant wants to split off more lots it would go through the larger subdivision process.

Chairman Newman closed the hearing for public comment at 6:15 p.m.

Ervin noted if the lot was squared off it would still be close to the one-acre minimum lot size. Newman asked Mulcahy for the language to grant the variance with an amendment to the lot shape as discussed by the Board. Mulcahy said the Board could amend Condition 7 to state, "The applicant will make the new lot approximately 136 feet in width to align the north/south boundary to the west to make the lot a rectangle, resulting in the minimum variance to alleviate the hardship.

Riley motioned to amend Staff Report CV-20-01 Condition 7 to make both the east and west sides of the lot 136 feet in width in order to square off the lot, resulting in the minimum variance to alleviate the hardship, while removing the proposed "ear" to the west. Motion seconded by Ervin and the motion passed with all members of the Board voting in favor.

Riley motioned to adopt Staff Report CV-20-01 as amended as Findings of Fact, second by Ervin and the motion passed with all members voting in favor of the motion.

Ervin made motion to approve the variance as amended, second by Johnson with the Board voting as follows. AYES: Ervin, Marquesen, Newman, Johnson, and Riley. NOES: None. ABSENT: Wright.

Variance Request – Reconstruction of a Damaged Non-Conforming Building

Chairman Newman read the variance request for reconstruction of a damaged non-conforming building. This variance would allow the owners, CNS Property, LLC, to rebuild the nine-unit apartments lost to a fire at 1711 4th Avenue West. The property is zoned CR-3 (One-family residential) which only allows single family structures on the property. The apartments were constructed predating the zoning and as such were a legal non-conforming use. Section 18.211.050 of the Columbia Falls Zoning Regulations state that a non-conforming use damaged by more than 50% excluding foundation must be rebuilt in conformation with current zoning regulations; meaning that the applicants cannot replace the apartments without a variance. The property is described as Lot 15, Block 1, Lenonville Subdivision in Section 17, Township 30 North, Range 20 West, P.M.M. Flathead County.

Mulcahy presented Staff Report CV-20-02, reviewing each of the 8 findings. Mulcahy noted that there is a small single-family residence left on the property after the 9-unit apartment building burned down this spring. The building was built in the 1960's before the area was zoned. The nine-unit apartment was a complete loss following the fires. Mulcahy noted that the applicant has applied for a variance to Section 18.211.050, Reconstruction of Damaged Nonconforming Buildings as this is the only way to rebuild this property because of the prior structure's density. Mulcahy noted that a zone change would not work because the area is not designated for multi-family in the Growth Policy. Mulcahy noted that the City Planning Office has not had this dilemma before this structure. Mulcahy noted that a PUD had been discussed but that would only allow for a total of 4 units. Mulcahy noted that staff had received three emails in opposition to the project, included in the packet, and one phone call in support of the project. Mulcahy noted that the email comment received by the City Clerk today was provided to the Board at their desk. In conclusion, Mulcahy said City staff recommends approval.

Chairman Newman asked the Board if they had any questions for staff. Ervin wanted to confirm that the building had been there before zoning. Mulcahy stated that the building was built in the 1960's and the City zoned the area in the late 1980's.

Chairman Newman asked the applicant to report to the Board.

Applicant Chad Ross stated he moved to the area 22 years ago and has owned the Dairy Queen in Columbia Falls since 2001. He bought the apartments in 2005, with his spouse and mother, and uses the apartment building in part for employee housing. Mr. Ross stated that he is asking to rebuild the rental units that existed and maintain the small house in order to provide needed affordable housing in the community. Mr. Ross reported that at the time the structure was burned there were 8 families with 17 adults and 5 kids occupying the building. Mr. Ross noted that the unit design fits the area and the property and will allow them to keep the housing affordable. Mr. Ross stated that he knows Ron Nash from Montana Creative as their two sons play football together. He worked with Nash to design the units so they are more aesthetic while maintaining affordability. Nadine Ross said she would never wish a fire on anyone's home but this is a chance to improve the property with new units, replacing the 1960's structure.

Chairman Newman asked the Board if they had any questions for the applicant. Board member Johnson asked for confirmation that they are not increasing the number of units. Ross said there were 10 units total prior to the fire and only one remains. Ross said they want to only rebuild the 9 units that were destroyed by fire. Marquesen asked if the single family house will remain on the lot. Mrs. Ross said the small two bedroom house will remain. Newman asked if the house will be rebuilt. Mr. Ross said they have no plan to rebuild the house as it was not damaged in the fire.

Chairman Newman opened the hearing for public comment at 6:40 p.m. Nicosia noted that Mr. Cahill has registered to participate via ZOOM and he is on the meeting.

Mark Cahill, 1725 3rd Ave W, spoke to the Board via Zoom. Mr. Cahill had sent detailed written testimony via email that was included in the Board packet. Mr. Cahill referenced the documents as he addressed the Board sharing his concerns over the replacement of the structures as opposed to a reconstruction of the existing structure, traffic concerns, density of the proposed project and past issues with maintenance and repair of the structure and cleanliness of the area. Cahill also noted issues with the leaching of a septic tank. Cahill addressed the Board for approximately 15 minutes when Chairman Newman said while he can understand the past issues he'd like Mr. Cahill to focus on the subject of the variance and keep his comments related to the variance. Mr. Cahill remarked that his comments are pursuant to the findings; particularly that the site is not clean as noted in Finding 6. Chairman Newman stated that he heard Mr. Cahill's concerns about a minimal buffer to 3rd Ave West and concerns about the greater coverage of the lot and heard comparisons to the PUD to the north. Chairman Newman asked Mr. Cahill if he had any other comments relevant to the request for this variance? Cahill said Finding 7: Ownership of the property is a business venture that does not benefit the neighbors and the fact that the finding is minimally objectionable is false, and finally Finding 8, granting this variance will defeat regulatory oversight and discretion and will give advantage to a foreign entity, CNS, and will have the effect of granting immunity to the foreign entity and will exclusively benefit CNS to the detriment of the neighborhood. Chairman Newman thanked Mr. Cahill for his comments.

Ron Nash, Montana Creative, project consultant. Nash stated that the applicant changed the design from 1 large 9-unit building to 3 smaller buildings for the rebuild because it would look more similar to the size and scope of buildings seen in the single family neighborhood and they can provide a better lot layout. Nash noted that the applicant could build one large 9-unit building but the proposed layout is a better design. Nash noted the slope change on the 3rd Ave side of the property. Nash noted that the client wants to keep it as workforce housing for Columbia Falls. Nash noted that the units are designed for families. Nash noted that the green space between the buildings is being left as much as possible and parking is significantly improved and in compliance with current zoning regulations.

Chairman Newman closed the public hearing for public comment at 7:14 pm.

Chairman Newman asked the Board if they had any questions. Ervin asked if the apartments were built when Cahill bought his house. Mulcahy confirmed they had been built prior to Cahills moving into the neighborhood. Marquesen asked about how grandfathering in zoning works in other jurisdictions. Mulcahy said the grandfather requirements for legal non-conforming uses vary between jurisdictions but that some jurisdictions allow legal non-conforming structures to be rebuilt or reconstructed. Mulcahy noted that our code does not allow a structure destroyed 50% or more by an act of God to be rebuilt which is the subject of this variance.

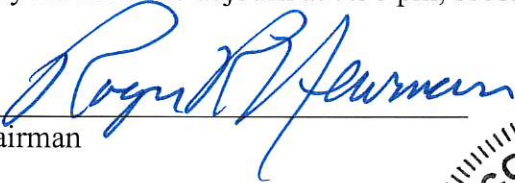
Newman stated that this is a tough decision due to the long exercise that people went through to put the zoning in place and this was zoned single family even though the apartments existed at the time of the zoning designation. Newman noted that the property to the north went through a public process to get a PUD approved, whereby they created greenspace to allow the multifamily apartment density. Newman noted that a PUD is possible for the applicants but the number of units that could create is less than original units. On the other hand, Newman noted that he feels for the owner as the property burned down. Newman noted that the Board received feedback from the public and the Board doesn't often receive comment. Newman said it is a lot to think about and is looking for assistance. Riley said she had a question about the PUD process and why that process wouldn't allow the applicant to build the 9 units. Mulcahy discussed the PUD process and reviewed the PUD provisions in Chapter 18.438; noting that density cannot be changed with a PUD. Ervin asked if the project meet the CR-3 zoning requirements other than density. Mulcahy replied that the project proposal meets the setbacks, lot coverage, height restriction as well as providing the required two parking spaces per unit. Newman asked if we would be having this same conversation if it was a vacant lot. Mulcahy noted that use variances and density variances aren't usually accepted but this structure was part of the neighborhood for 50 years roughly and the variance is to Chapter 18.211.050, permitting reconstruction of a building destroyed more than 50% and not to the CR-3 density. Marquesen asked if the building was connected to the sewer. Ross said that the older apartments were not connected to sewer but had an existing septic system but the new buildings will be connected to city sewer. Riley asked if the Board should be concerned about the ingress/egress on 3rd Ave. Mulcahy noted that the project will go through the building permit process which includes zone review (landscaping, parking) and review of public works standards; noting at that time access will be reviewed for safety and sight distance. Newman commented that the project is nicer than what was there, but this is a chance to make the area more uniform to the CR-3 zone. Newman noted the project to the north, asking how many units were approved in that location. Nicosia said there were 14 units in the two buildings. The Board discussed the adjacent PUD and the process they went through for approval compared to the variance request under consideration. Riley noted that the City Council had changed the neighborhood with multifamily units for the PUD to the north as well as the 16 units previously approved south of this project. City Attorney Breck stated it would be difficult to justify a decision to deny the variance request given the long history of the apartment building being there prior to the institution of the current zoning, the existence of other multifamily buildings with more density close by, and the split from one monolithic building into three smaller units that look more single family in nature. Breck noted that this request checks all of the boxes for a variance and the other issues raised are not relevant to the request, such as whether or not this is a business venture and isolated instances of noted uncleanness. Breck noted that the proposal meets the lot coverage requirement. Breck said while it is a difficult decision, the criteria in the findings have been met and that is the basis of the Board's decision.

Riley motioned to adopt Staff Report CV-20-2 as Findings of Fact, second by Johnson and the motion passed with all members voting in favor.

Ervin made motion to approve the variance, second by Marquesen. Newman noted that he appreciates all of the comments but he also appreciates the efforts that have gone into zoning the area. Motion passed with the Board voting as follows. AYES: Ervin, Marquesen, Johnson, and Riley. NOES: Newman. ABSENT: Wright.

ADJOURN

Riley motioned to adjourn at 7:30 pm, second by Johnson.


Chairman

Attest:


Clerk

