

**CITY OF COLUMBIA FALLS PLANNING BOARD
APRIL 12TH, 2022**

REGULAR MEETING – 6:30PM.

CALL TO ORDER

Chairman Vukonich called Meeting to order at 6:31 PM

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT

Vukonich
Smith
Byrd-Rinck
Shepard
Duffy
Kavanagh
Singer

ABSENT

Lundgren

Also present: Contract Planner Donna Valade, City Manager/Zoning Administrator Susan Nicosia, City Attorney Justin Breck

APPROVAL OF MINUTES:

Approval of March 15th, 2022 Regular Meeting Minutes

Correction by Singer to attendance of March 15th, 2022 Planning Board Meeting Minutes. Smith was listed in both PRESENT and ABSENT. Smith was PRESENT and Singer was ABSENT.

Motion made by Duffy to approve the March 15th, 2022 minutes with correction, Seconded by Shepard. Motion carried with all present voting in favor: Vukonich, Smith, Byrd-Rinck, Shepard, Duffy, Kavanagh, Singer

VISITOR OR PUBLIC COMMENT: (An opportunity for the Public to comment on any items not on tonight's agenda) NONE

PUBLIC HEARINGS AND ACTION:

Chairman Vukonich read the hearing notice and asked for the Staff Report Presentation:

Request to Amend a Planned Unit Development in the Columbia Falls Zoning Jurisdiction:

Ruis Holdings 540 Nucleus Ave LLC is requesting an Amendment to their Planned Unit Development overlay for the property located at 540 Nucleus Avenue which was the former Bank of Columbia Falls site. The owner is amending the design of the south building to allow a height of 40-feet to the top of parapet and also allow a casino in the proposed restaurant on the main floor. Otherwise, the building meets all use and dimensional requirements. The property is described as Lots 11-15 and also all that

portion of the east half of the vacated alleyway lying adjacent to the west boundary line of said Lots 11-15 inclusive of Block 37 and Lot 10A of the Amended Plat of Lots 1-3 & Lots 6-10 of Block 37 according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

Contract Planner Donna Valade presented Staff Report CPUD-22-02 for Ruis Holdings at 540 Nucleus Avenue. City Manager Nicosia reported that Condition Number 3 should read that the project shall be built in substantial compliance with the drawings prepared by Jackola Engineering. Byrd-Rinck asked if the height increase was in addition to the previous height increase. Nicosia responding, no, this request is a revision of the first building and is a restaurant/bar that is replacing the hotel previously planned. The height increase is only for the stair tower and elevator shaft to accommodate the elevator workings and provide a stair access to the roof. Duffy stated that he believed that the first-floor use of a restaurant casino would require a higher ceiling and that is why they are seeking to raise the height. Bobby Jo with Jackola clarified that the restaurant is 15 feet tall and the two floors with apartments are 9 feet tall. Kavanagh asked if the Fire Chief has allowed the additional height. Nicosia said yes, the height was approved by the Fire Chief. Nicosia noted that four written public comments were in the packets and are entered into record.

Chairman Vukonich asked if the applicant wanted to address the Board. Bobby Jo stated she is here from Jackola Engineering to support the application and answer any questions.

Motion made by Singer to Adopt Staff Report CPUD-22-02 as Findings of Fact, seconded by Nelson. Kavanagh stated that the height of the buildings on Nucleus is becoming more apparent that they need to consider it down the road. Duffy stated that the only space available downtown is up and they have to make buildings higher to accommodate growth. Kavanagh challenged the community by saying that the community can choose to not go up. Does Columbia Falls want to keep going vertical? Kavanagh stated he does appreciate the additional parking and he hopes the City completes a parking study since it can be difficult to park. Nicosia stated that the Council held a downtown parking workshop just last evening. Shepard stated that the only option is to annex forest land nearby or use the existing town for growth and he would rather use the town. Nicosia stated that buildings don't exceed three floors and height increases are for architectural elements. The intent of the 35 feet is so that buildings do not exceed three stories but with architectural elements buildings will look more pleasing. Vukonich stated that they have approved a height increase. Smith stated that maybe it was a mistake to approve it the first time. Duffy asked if 35 feet is the max height for a residence and Nicosia stated that is correct. Duffy stated a commercial building might need more height than a residence. City Attorney Justin Breck stated that the downtown corridor zone was created to encourage a conglomeration of commercial businesses and the only way it can grow is to go up. Byrd- Rinck asked if the norm would be to go higher than 35 feet, should the height limitation be changed. Nicosia stated that it would require a text amendment. Motion carried with all present voting in favor to adopt CPUD-22-02 as Findings of Fact.

Motion made by Singer to Recommend Approval of PUD to City Council with conditions, seconded by Duffy. Motion passed: Ayes: Vukonich, Nelson, Byrd-Rinck, Shepard, Duffy, Kavanagh, Singer. Nays: Smith.

Chairman Vukonich read the hearing notice and asked for the staff report presentation:

Request for an Amendment to Conditional Use Permit to Construct 36 Apartment Units in the Columbia Falls Zoning Jurisdiction:

The applicant, Toby Gilchrist, is requesting an amendment to an approved Conditional Use Permit that

allows the construction of 36 apartment units in two buildings, eighteen units in each building. The proposed amendment would allow the north building to allow owners of the units to offer short term rentals of the units. The south building would remain exclusively long-term rental (30-days or more). None of the other elements of the project change with the request of this amendment and this amendment only deals with the length of stay for the north building. The property is located approximately ¼ mile north of Highway 2 at 302 Meadow Lake Blvd. The property is described as Assessors' Tracts 2BDEA and 2BDAEA of Section 7, Township 30 North, Range 20 West, P.M.M., Flathead County.

Contract Planner Donna Valade presented Staff Report CCU-22-01. This amendment would allow owners of the units in the north building to offer short-term rentals of the units. Valade noted that staff is not making a recommendation to the Board.

Vukonich asked the Board if they had questions for staff. Shepard asked if the business plan was changing but the plan was not changing. Donna Valade stated that is correct, everything is the same except the usage. Shepard then stated that the Planning Board does not take a stand on the business plan and asked if that is correct. City Attorney Justin Breck stated that you have to look at this issue based on criteria for approval. He then said that Contract Planner Eric Mulcahy primarily looked at the character of the neighborhood. Vukonich stated that he does not recall anything like this request coming to the Planning Board. Nicosia stated it is coming back to the Planning Board because Eric Mulcahy considered it a significant change and staff cannot make a significant change without going to the Board. Vukonich remembers that the public was concerned at the original hearing that these would be turned into short term rentals. City Attorney Breck stated that in his opinion and legal research, the law does not look at short-term vs long term rentals differently. Shepard asked Nicosia how many vacation rentals are in the city and surrounding areas. Nicosia stated that there are about 100 in the City. Shepard stated that talking to the Police Chief there are very few calls about vacation rentals. Duffy wondered why there is a 9-18 number of apartments up for vacation rental designation. The applicant Toby Gilchrist answered saying that there will be two apartment buildings of 18 units and their goal is to sell around half of one of the buildings as vacation rentals, around 9 to 10 units.

Vukonich opened the Public Hearing at 7:12 PM

Paul Downing, 12 Talbot Pines Loop, stated that the whole valley is short on workforce housing and that Columbia Falls does not need any more short-term rentals.

Tracy Day, 2715 Witty Lane, stated that she was concerned that no financial viability assessment was submitted with the planning application which would show the reasoning behind the decision to have 9-18 units as short-term rentals. She realizes that this would not be presented to the members of the public but could be provided to City Planners and presented to Board Members for their assessment. She wanted to know if there is a real financial need to sell units as short-term rentals. She is concerned that this development sets a precedent for this area and that it could lose a sense of community. Short-term rental applications can place a stress on infrastructures. Lack of housing leads to lack of employees which leads to a lack of services. She believes this proposal is a significant change to use of the area and not just to the business plan so she urges the Board to consider that as well. She is wondering if the Council would be open to doing a Housing Supply Summary to see what is required and if developments coming forward meet those demands.

Shirley Folkwein, 285 Shooting Star Drive, stated she was a frustrated and was misled as a member of the public and it seems like her public input would not have an impact since this is a business plan and

the Board does not consider those. She said she supported Mr. Gilchrist's original plan to have 36 units as long-term rentals but she does not support the current plan of turning half of these units into short-term rentals. Ms. Folkwein states that we need more housing in the area and says that this is the Planning Board's opportunity to do something about this. She said she attended the January 2nd Council Meeting where a gentleman spoke about the need for more workforce housing. He said that the lack of housing was partially a result of short-term rentals and she agrees with him. If more short-term rentals are added to the existing vacation rentals it is a large number of short-term housing for a town of this size. There are families that want to live in this area that will not be able to find housing. She met someone like this a couple weeks ago and this person was being forced to move out of their rental because their landlord was converting it to short-term housing. She believes this to be partially a manufactured housing crisis brought on by short-term rentals. She has become quite familiar with and cynical of the planning process in the past couple of years, if the developer has met all of the conditions than they are obliged to approve the request, it does not matter what the public has to say. She lastly asks the Board to please consider this from a broad perspective and to not approve it.

Jelani Lawson, 292 Meadowlake Boulevard, stated that he fundamentally disagreed with the statement in the packet that the amendment only deals with the length of stay for the north building. He said that the change reduces the number of rental units in Columbia Falls and was the primary reason for the previous zone change. The intent of changing the units to nightly-weekly rentals will only appeal to second home owners and will not increase workforce housing but will be used for personal income generation. The proposed change will affect the character of the neighborhood with vacation rentals being put in right next to single family residences. He believes this will intensify the noise with partying vacationers. Property management will become an issue as well as fencing for both noise and security reasons. He believes traffic will actually increase from vacation rentals. This is just to cover a developer's cost and it is not the City's obligation to fix his cost issues and the developers and city's priority should be around its citizens. The priority of vacation rentals is ultimately not sustainable. What happened to the need to address workforce housing? He stated if approved, he would like to place the vacation rentals on the south side of the property and not the north. He would like to see an 8-foot fence on the side of the single-family residences and require sidewalks on Meadowlake Boulevard.

Kristen Downing, 12 Talbot Pines Loop, stated that her biggest concern is with the children who will not be able to find a single-family home so they will have to resort to an apartment. They will not be able to afford an apartment because people will not be willing to sell their short-term rentals.

Brook Stearns-Lawson, 292 Meadowlake Boulevard, stated that her focus is on the previous zone change. These 18 units will not "tip the scale" but will set a precedent. She asked the Planning Board if they would have made the same decision during the zone change hearing knowing that these would be short-term rentals and not long-term. She does not believe that the intent with this proposal is a bait and switch but it is a slippery slope. This change does not prevent locals from being priced out but it makes it all the more likely since investors will want to just do vacation rentals and not long-term housing. Columbia Falls depends on the tourist industry and we will suffer if we do not provide workforce housing and they have to compete with investors for housing.

Nathan Dugan, 937 Kalispell Avenue, Whitefish, stated that he does a lot of housing advocacy work in Whitefish. Short-term rentals are an issue for who can buy the units. If these units can be short term rented than they will be more expensive and will be focused towards a demographic of people who typically don't live here. There will be a more difficult time competing for housing. He is not opposed to condominiums to cover costs. Something that is worth exploring with the attorney or the developer is to have half the development be condos and have a stipulation that they cannot be short term rented.

Mallory Phillips 937 Kalispell Avenue Whitefish stated she also does housing advocacy. As we develop single family areas, the community seems to be for long term rental development but when there is a chance that they will be short term rentals it is harder to gain community support for future development. This decision sets a precedent that will make families less likely to support multi-family housing when they believe it could be used for short term rentals.

Bill Goldberg, 208 1st Avenue E, Kalispell stated that he wants to make sure that everyone knows that this was not a bait and switch and he has been working on this project with the applicant for over a year and a half. There is a belief that there is not a financial impact but he invites anyone to come and talk to him and he will show you the higher development costs from the planning stage to now, at the building stage. Goldberg understands it is a different community but if the density is there it creates other opportunities for affordable housing. The reality of this property was that it was approved for 2 duplexes but with the zone change the density wasn't targeted for max but for what could fit in there. The reality with the price increase was that he thought that it was going to be a hard no. He assures everybody that they gave the applicant the best number that they could. He knows that the developer genuinely wants to provide long term housing, that is where the project started and that's where we thought it was going to go. They understand the changes that are happening and with Ruis' project to the north it will provide additional housing and additional places for long term rentals. It comes down to trust and he trusts the applicant to do the bare minimum of short-term rentals. There is precedent for changes to short term rentals and projects changing over time but there is no intentional bait and switch.

Tracy Day, 2715 Witty Lane, stated that she was wondering if a condition could be added to the application to restrict any change of use to the rest of the site. Also, she wondered if the Board could enforce a phased approach to the development. Vukonich referred this question to staff. Valade stated that if they wanted to change any of the other units to short-term rentals they would have to go through the same process and each individual unit would be required to submit an application. Day also asked if the Board can defer the request until the developer provides a financial viability assessment and profit loss statement. Nicosia answered that it is outside of the City's purview to ask for a business plan, it is not a City or statutory criterion on which the City can base a decision.

Chairman Vukonich closed the Public Hearing at 7:51 PM noting written comments received in packet are also part of the record.

Chairman Vukonich asked the applicant if he wished to address the Board. Toby Gilchrist stated that he has an understanding of the need for affordable workforce housing in the valley. There is a supply issue with affordable housing and at all price points. It is being impacted by price points across the board. When people are building their mansions, they buy a smaller house then when their mansion is finished, they turn their previous house into a vacation rental. People come to retire here and they can't quite afford the house payment so they turn that house into a vacation rental with the intent to come and live in it when they retire. This new development will not be a mini hotel, he has financed many projects on Nucleus that are vacation rentals and almost all of them are primary residences. He owned vacation rental units in Columbia Heights and there were no complaints the entire time. The traffic impact study shows there is less impact on traffic with vacation rentals. Gilchrist stated that the answer to affordable housing in this valley is throwing supply at every single price point as supply and demand affects everything. Gilchrist stated that 18 vacation rental units in one place reduces demand for vacation rentals scattered around town, this is in a concentrated location and close to a vacation destination. From his observation you do see primary residences and locals investing in vacation rentals as another source of income. Around 10% of his residents for Columbia Heights that were vacation rentals were here for medical care because the hotels couldn't accommodate them. Gilchrist stated he has two decisions:

move on from this project or try and figure out a way to finance the project. This decision will support local businesses and the community through tax revenue. He stated that he appreciates the need for affordable housing but there is no way to get there right now. The project still supplies 18 long-term rental units. With only having 4 units with the CR-5 zoning, there was no way to finance the project with the extension of the water line. Gilchrist stated the he saw a townhouse in Columbia Falls that was about 1,400 or 1,500 square feet and it sold for \$475,000, is that affordable? It is a conundrum and the only answer is more supply across all price points. The people who plan on moving here buy something instantly and then shop.

Vukonich asked the Board if they had any questions for the applicant. Vukonich says that he has been reading the request and wanted clarification that 18 is the maximum number of units he will sell as vacation rentals. Mr. Gilchrist said he is correct but at this point he will only need to sell 9 units as vacation rentals to cover his cost. Gilchrist stated that there was no way to just designate half of the building as vacation rentals so he is making the whole building available to be sold as vacation rentals. Mr. Gilchrist is curious about the concern during public comment about changing the designation of the long-term rentals to short-term rentals in the other units and is there a way to restrict the developer from doing that? City Attorney Breck stated that his was answered earlier, if he chooses to do that than he will have to come back with another amended application. Breck noted that in addition, the owner of each individual unit that will be a vacation rental will have to go through the administrative conditional use permit process with the City. Nicosia stated that if it is in the Condominium Declaration that only 9 units will be vacation rentals that a 10th application would not be approved. Gilchrist stated that the HOA will have strict stipulations on quiet hours and vacation rentals. Gilchrist was wondering about the fence height that was in the proposal and he thought it was 8 feet already. It was confirmed that it was 6 feet in residential zones per Nicosia. Singer had a question about how many of the 9 units is he thinking of selling, how many bedrooms and will they be phased? Gilchrist answered that they will be 3 phases of construction in blocks of 3. They will be mainly 2 and 3 bedrooms in an equal mix. Singer than stated that it will not be first time buyers because of how the building is warrantied and asked what his prices are, what will they be selling for? Gilchrist stated that prices are based on market. Gilchrist added that a unit with a vacation rental can be sold at about \$600,000 and without it is about \$400,000, this project cost has gone from \$5.2 to \$8.2 million in 5 months.

Vukonich had a question for staff about the clarification of the minimum of 9-18 units for vacation rentals and asked if we should make a textual change stating a maximum of 18 units. Valade answered saying that Staff Reports are written for worst case scenarios and it was reviewed for the 18 units not the 9 units.

A motion was made by Duffy to approve Staff Report CCU-22-01 as Findings of Fact and it was seconded by Singer. Singer said that she recalls that the original application was denied because they thought there was a huge safety factor with no sidewalks. Nicosia answered by saying that the project stopped at the zone change because of the questions and some of them were addressed in the Conditional Use Permit. In order to address the questions that were coming up in the zone change it wasn't a denial it was a deferral. The questions were then addressed and it came back before the Planning Board and it was approved. Singer wondered if the nightly-weekly rentals were in the previous proposal would the Board have approved it. Singer stated she is still concerned about the safety of the people that will live in the 18 units that are long-term rentals as well as visitors that don't know where they are going. Nicosia said that the city can control the occupancy of the dwelling due to fire code based on bedrooms. Breck stated that this discussion isn't any different for a long-term rental. Breck cautioned the Board on basing their decision on long term vs short term rentals. There is no difference

on what an owner of a long-term rental can do with occupancy, the tenants and controlling their behavior. He realizes that this is a discussion about the desirability of affordable housing but that is a policy decision. To come in the middle of something and say that based on what has been heard in the last few months that affordable/workforce housing is more desirable than short-term rentals is a change in policy in which the City has not given people notice. Breck cautioned the Board on making a decision based on what they would like to see without an actual policy change in city ordinances. Kavanagh stated that the Board approved the zone change for strategic reasons. There was a lot of conversation about creating workforce housing around the zoning change he noted. Kavanagh stated that the Board had discussion about having to extend the water main and building a walking path and if this short-term rental information was supplied it would have changed his decision. He believes it does change the nature of the zoning change and does change the character of the neighborhood. Vacation rentals are taking a much more commercial look to their operations and for those reasons that zoning change would have made him think about the commercial implications and ramifications. Vukonich stated that staff considered this a significant change and brought this proposal back to the Board to consider the impacts of the change. Breck does not disagree with what Vukonich is saying and now they are coming back to a point of criteria where the Board can say they do not agree with this because it changes the character of the neighborhood. He does not want them to consider that they would have denied the previous proposal because there is concern for there being more housing as that is nonsensical and not defensible. Shepard stated that considering the want for affordable housing, his neighbor's house sold for a large amount of cash money. Do you want to sell affordable housing or say that this none of this project is affordable housing, it cannot be both ways? Shepard stated that the county could care less about Meadowlake Boulevard and with the new housing they should have done something to the road. Nelson stated that this is not affordable housing this is market-rate housing. Kavanagh asked for clarification on apartments not condominiums in the original document and this proposal is now taking the north building and making it into condos. Nicosia stated that the developer has the ability to condo under state law, it doesn't affect the zoning and it is not something the City can approve or disapprove. Byrd-Rinck stated that they had approved the previous plan because there was a need for long term housing and this new proposal would change the character of this neighborhood. Kavanagh stated that he believes that there would be a different impact on surrounding properties with short term rental use. Duffy stated that he is concerned that there hasn't been any discussion about surrounding areas and is future development going to use these reasons for short term housing. Duffy says that the last two sessions that they had approved two short term rental situations in a building modification and an RV park situation so it seems to be part of a trend. Vukonich asked the Board to look at page 221, of the proposal where it says that it will only change the term for the units in the north building, should the Board change the units to the south building? Breck reminded the Board that the staff report does not take a position and their decision doesn't change that only if they want to send this to the council as approved or disapproved. Nicosia stated that the Planning Board can amend the findings of the report if they disagree with them. Smith said that they should probably go back to what they agreed on originally; long-term rentals. Byrd-Rinck also stated that they should go back to what they originally agreed on; long-term rentals.

Kavanagh proposed amending the Staff Report, CCU-22-01, page No. 8, d. Immediate Neighborhood Impact as the proposed use does impact the surrounding areas. Nelson wondered if the southern building could be turned into short-term rentals, leaving the northern building as long-term. Gilchrist answered saying that the only reason that they designated the north building as short-term is due to the industrial property on the south. Singer asked what is going on with the property to the south. Nicosia said that the property is zoned industrial and it can be a storage yard but the owner will need to meet the shielding requirements with fencing and vegetation. Vukonich asked if the change from short-term rentals in the northern building to the southern building would they have to come back and review that change? Breck

was wondering if the Board would like to change the recommendation that the short-term rentals would only be conducted in the building to the south. Vukonich answered in the affirmative and would that require them to rereview this proposal? Nicosia stated that it is a stated condition .Vukonich said that it would be dealt with in the next portion of their process.

Kavanagh made a motion to amend Staff Report CCU-22-01 page 8 to include a paragraph that states the change of usage with the property does have an effect on the surrounding neighbors. This motion was seconded by Byrd-Rinck. Valade stated that usually a change to the findings of fact comes with a “because”. Kavanagh stated that the change in usage to a short-term rental creates a transient nature to the property. Breck stated that the change is based on short-term vs long term rentals and that is different than the court saying that this is commercial now because you do short term rentals, no it is not it is still residential. Breck stated that you are talking about an impact because of the change to short term rentals. Kavanagh said that there is an impact on the neighborhood based on everything they have heard so his motion would be “The proposed short-term usage impacts the immediate neighborhood as the frequency and high change-over of occupants in the building creates a transient nature which changes the character of the neighborhood.” Nicosia read back the motion as requested by Vukonich and stated that it would be inserted in between the two paragraphs on page 8. A roll call for the amendment to the findings of fact with all present voting Aye: Vukonich, Smith, Nelson, Byrd-Rinck, Shepard, Duffy, Kavanagh, Singer. Roll call vote was made to adopt Staff Report CCU-22-01 as findings of fact with all present voting Aye: Vukonich, Smith, Nelson, Byrd-Rinck, Shepard, Duffy, Kavanagh, Singer.

Duffy motioned to recommend approval of the Conditional Use to City Council, seconded by Shepard. Motion Failed: Ayes: Shepard, Duffy. Nays: Vukonich, Smith, Byrd-Rinck, Kavanagh, Singer. Absent: Lundgren.

ADJOURNMENT – Meeting duly adjourned at 8:54 PM

Chairman

Attest:

Public Works Clerk