

Minutes of the Monday, May 22, 2023  
Meeting of the Planning & Zoning Commission  
Of Lava Hot Springs, Idaho

Those in attendance: Commission Chair, Vicky Lyon, Commission members: Jim Page, Lisa Guthrie, and Mark Lowe. Code Compliance Officer, Hudson Saffell. Office Staff: Jill Makuaole and Chandra Taylor. Guests: Jeanie Avery, Victor Lyon, John Taylor, Kris Lyon, Bruce Parker on Zoom plus one unknown person on Zoom.

Meeting called to order by Vicky Lyon.

Vicky welcomes Jeanie Avery to the Planning and Zoning Commission. Jeanie Avery is sworn in by Chandra Taylor.

Next meeting will be June 26, 2023 at 6:30 pm. The agenda deadline for that meeting will be 5:00 pm June 19, 2023.

Approval of minutes.

Vicky Lyon - I have one correction for the minutes of April 24, 2023 in the discussion on zone for new annexation. The word "until" was missed in the P & Z Discussion. Jim Page asked "What zone is proposed for this new annexation? Mark Lowe replied, "That won't be determined it is annexed." The word 'until' was left out.

Mark Lowe – I have a couple later that page "Mark Lowe – Where these homes are used as overnight rentals I think it is incumbent on the city to apply the "International Code" should read International Fire Code. Then further on "Again it's not about fire suppression, it's to allow – A little back ground, if you go down to the swimming pool down here. It is a cinderblock building with concrete floors. There are sprinklers there. I fought tooth and nail against putting them in. It was ridiculous. I lost that fight because it is a health and safety issue. It's to allow people to get out. And on the last sentence, "In this litigious society what lawyers are not going to be lining up to carry that suit into court? Then Kim Harris's comments, itself is one word and should be two, it's self.

Motion to approve the minutes as corrected.

Motion by Jim Page.

Second by Lisa Guthrie

All Aye

Vicky Lyon – I will oversee the public hearing but I will excuse myself from voting.

Public Hearing on the Taylor's Conditional Use Permit for a Bed and Breakfast in an R2 zone.

## Motion to open the Public Hearing.

Motion by Mark Lowe

Second by Lisa Guthrie

All Aye

Hudson Saffell – Facts and findings: The notification of public hearing was posted in the Idaho State Journal on six May. Letter to all property owners within a 300 foot radius of 55 E. Fife were mailed on the eighth of May, 2023. I guess it is worth mentioning that out of all the 300 foot radius property owners. There were eight actual Lava residents. Eighteen folks not in Lava City limits. Those have to be mailed certified returned receipt. I didn't receive seven of them. A couple of them came back not at this address anymore. A physical sign was posted adjacent to the entrance of the proposed B and B. Ten days prior to today for a minimum of seven days. This application for a conditional use applies only to 55 E. Fife. The single family dwelling closest to Center Street. Today at 3:30 pm I personally inspected the interior of the main level of the home which includes the proposed rooms and living spaces to be rented to transient guests. The upper loft master bedroom is not a separate living unit. It is open to the rest of the rest of the space. There is only one kitchen on the main level. As John and Michelle's letter specifies they have ample off street parking for four bedrooms and they will be advertising for a maximum of eight guests. They state that the on-site manager(s) will be members of their family. Who will provide breakfast for guests? The manager(s) will reside in the basement of the house. The home does not require a change of use/ occupancy according to the International Building Code. 55 E. Fife's current occupancy classification is R-3. Don't get that confused with the zoning. An R-3 for occupancy includes such things as single family dwellings as well as lodging houses. Which is the closest definition the International Building Code has to a bed and breakfast.

Vicky Lyon – Thank you Hud. Does anyone have any questions for Hud?

Mark Lowe – I do. So there are cooking facilities both on the main floor and in the basement?

Hudson Saffell – Yes. A kitchenette in the basement. But only one kitchen on the main floor.

Mark Lowe – But two in the building. Oh, I had one other. On the certificate of occupancy there are special stipulations and conditions. Were those met?

Hudson Saffell – Yes, the retaining wall was installed and the Fire Marshall approved. It's not paved. All have been completed.

Lisa Guthrie – I have one, is there fire suppression?

Hudson Saffell – It does not.

Vicky Lyon – Any other questions?

All – No.

Vicky Lyon – ok, John it is your turn.

John Taylor – I don't have a lot more to add. Hud did a good job. Michelle wrote the letter. Basically we are just looking for the same treatment that...a precedent has been set as far as the Hirschi property ours is pretty much identical the only difference is that we have a lot more parking available for guests. They have neighbors on both sides of their property. We have empty lots on every side except for the one that we own. We have a long term rental in there. We can't fathom a reason why ours wouldn't qualify. Like I say you've already set the precedent with the Hirschi's. That was used as the precedent for claiming that the city of Lava Hot Springs allows these type of uses. So that's why we are proceeding with this action.

Mark Lowe – Will the guests have access to the cooking facilities on the main floor?

John Taylor – It's all a big one open room. Living room & kitchen...

Mark Lowe – Right, so they would have access to do their own cooking and etcetera.

John Taylor – I would imagine that they could if they would like to, yes. Do the guests at Hirschi's not have access? We can close it off if that's an issue, we can turn off entirely. Like I say, I'm not trying to get special treatment. I just want to be treated the same as others have been treated.

Vicky Lyon - I think that the Hirschi's just had a kitchen on the main level. There was not one downstairs.

Mark Lowe – The traditional definition of a bed and breakfast is you are renting out sleeping quarters and providing the breakfast.

John Taylor - So how...you approved the Hirschi's. I assume you went through all these questions on how they were going to do that. No let's, no, this is important. Cause we have to set precedent that you guys have established. And so are the Hirschi's making food off site? And bringing it in or do they have a chef camped out to prepare the breakfast? How are they doing that?

Mark Lowe – If you are asking me, I do not know. I wasn't on the commission then.

Jim Page – I believe it's that someone has to be there, employed by you or your family member, when guests are there to prepare the food.

John Taylor – Yeah, yeah we are doing that. That's not a problem. It's just we are going down a rabbit hole of the kitchen. I'm just trying to figure out how that flies.

Jim Page – I don't see, two kitchens in one house I don't see that being a problem.

Hudson Saffell – I have been in the Hirschi residence. It is exactly the same scenario. It's a home with bedrooms. It's all about the manager or owner onsite is responsible for that kitchen. Supervision I think is the keyword. That's not to say that you can't go to the refrigerator and grab something – I don't know that that is really a safety issue. As far as cooking goes it is traditionally the owner/manager doing the cooking. Serving the meal.

Mark Lowe – I am not familiar with the Hirschi set up or what went on there.

Vicky Lyon – Any further comments? (None) Next would be in favor commentary. We did receive 4 letters. I guess for people who are on line and may not have access to this packet. John if you don't mind me reading Michelle's (Taylor) letter. Reads the letter from Taylor's sent to neighbors. There is no one in the audience. And from the letters we received, which I will read, there are none in favor. However, there are four opposed. Opposed commentary: Reads the four letters: Reggie Cochran, Shane and Chrystal Beeson, Carl Brown, Ken Gallagher. Is there any questions? John we will give you an option to make any further comments.

John Taylor – No I don't really have anything to add. I understand how the neighbors feel about it. We are trying to play by the rules, like we have always done. We have never rented these properties outside of what was legal, allowed and permitted. We are doing monthly rentals now. We have a city business license to do that. Based on legal arguments and things like this that have occurred this is an avenue that should be open for us to pursue. I understand that there is a lot of emotion in those letters but...If the city truly wants to completely ban bed and breakfasts, then you need to do that. Codify it. Close the window completely outside of the lower zones. And I won't be sitting here. There is an avenue for us to do this and we are trying to pursue it through that avenue. We will comply with all the rules, laws and everything. My wife is planning to spend the entire summer here. That's our intentions, we are not trying to do anything shady. We are above board that's why we've been before this council and city council multiple times. We are trying to do it by "the book". And so we feel like "the book" allows us to do it this way.

Mark Lowe – I have a comment, it appears to me that what is proposed here meets the requirements that the city has set down for having a conditional use permit for a bed and breakfast in a noncommercial zone but I have concerns on a couple of

levels. One being that it really doesn't fit that mold of a bed and breakfast. Which is I think of the Bob Newhart Show they have got the dining room the people come down they have breakfast and they go out. They don't have their own cooking facilities. This just kind of smacks of stretching the rules to the point where yes, you are complying with the rules but it's still an overnight rental, basically. I would assume that, and there again it's just an assumption on my part, that the manager, or relatives that are staying in the basement really don't have access to the upper level except to deliver the meal or whatever else but other than that. The kitchen area the whole area is turned over to whoever has rented the place. But, like I say it appears to meet what the city has required for a bed and breakfast.

John Taylor – All we can do is try to follow the rules the city has established. If they want to...

Mark Lowe – Sure, I agree with you.

John Taylor –...if they want to change the rules and say it has to abide by the new way. Then we can decide if we want to go through a remodel and change everything we are doing. We are trying to follow the rules the city has established.

Mark Lowe – I understand completely. And I agree with you. That's what I say, it appears that it meets those requirements set forth by the city. It's just...I wouldn't want to live next door to it.

John Taylor – and luckily nobody lives next door to us, Mark. There is not a house that borders our property other than the one we own.

Mark Lowe – There are other properties around and you are next door regardless.

Vicky Lyon – Is there any more questions or comments?

Lisa Guthrie – I have one. On fire suppression. We have told other people that have nightly rentals or people staying in them that they have to have fire suppression.

Mark Lowe – As a bed and breakfast they don't have to because it's a residence and people have been invited to stay as guests.

Vicky Lyon – Would someone like to make a motion to close the public hearing?

Motion to close the public hearing.  
Motion by Lisa Guthrie

Bruce Parker- Welcomes Jeanie Avery to the commission. Madame Chair this is a conditional use permit. I don't know very much about the application but I do know quite a bit about conditional use permits. You have three options in front of you. One is you can approve the conditional use permit as submitted by the applicant. With no additional changes or revisions. The second option is to approve the conditional use with the adoption recommendation by city council on reasonable conditions. And so you have the opportunity to tell the reasonable conditions to make sure the bed and breakfast functions as best as it can and to mitigate any negative impacts on the surrounding homes. The third option is to deny the conditional use application. But to do that you must be able to show that there is nothing the applicant can do that will mitigate an negative impact. So that is a fairly high threshold. It seems to me that you have a couple of opportunities here to draft conditions. One is require this bed and breakfast to meet every requirement as presently identified in the Lava Hot Springs Building Ordinance. We could actually write down what those are. Hud knows what they are and I know what they are. The second condition I believe the applicant has already advanced and I would recommend to the planning commission to do this. Is to place a deed restriction against the property. That this property can only be used as a bed and breakfast. Not a short term rental or anything like that. It can only be used as a bed and breakfast. In that regard it would seem to me that the distinguishing thing between a bed and breakfast and a short term rental is the ability of the residents to cook their own meals. That is typically not allowed in a bed and breakfast. I would recommend to you that a reasonable condition would be that any occupant not be allowed access to the kitchen facility. That is the responsibility of the owner or the occupying manager. Therein lies another condition 24 hours a day seven days a week either the owner or the owner's designated manager must be a resident in this bed and breakfast. And if you believe there are ways that we can mitigate the impact of noise and confusion or disruption to the neighborhood. The applicant has asked for a maximum of 8 residents at a time. You can be thinking about reducing that number which I believe is a reasonable condition. That is four conditions at a minimum that the commission may want to discuss.

Vicky Lyon – Thank you, Bruce. With that being said, if that were a condition, it's an open floor plan. It wouldn't work.

Jim Page - Just tell them that they aren't allowed to cook in your house. And if I was renting a bed and breakfast I wouldn't want to do my own cooking that's why I am on vacation.

Jeanie Avery – And perhaps it would also include having no supplies in the kitchen, pots, pans, dishes, etc.

Vicky Lyon – Yea, but somebody has to go prepare breakfast. That is hard to regulate.

John Taylor – There is only one person in this room that operates a true bed and breakfast and that's Vicky. So do you lock your kitchen do you remove your pots and pans?

Vicky Lyon – No, because they don't have access to my kitchen. It's not lock during the day but the door is shut and people don't go in there.

John Taylor – So they could have access if they wanted.

Vicky Lyon – No, I am pretty strict about it. Because it is a commercial kitchen.

John Taylor – You've got somebody there on-site to make sure they aren't using it. Just like we are going to do. Now, I just want to make sure, Bruce. According to Bruce's comments, I just want to make sure we are not moving the goal posts. For the Hirschi's were all these conditional uses discussed? Just to make sure we are being held to the same precedent and standard that the Hirschi's were. I just need to make sure that these are the same goalposts as the Hirschi's. And if these are the same goalposts then I will try to kick the football through them. You can't move the goalposts depending on who is in front of them. So Bruce, do you know if those are the same conditions as for the Hirschi's?

Bruce Parker – Same conditions I believe. But, here is the thing I would mention to the applicant and the planning commission.

Hudson Saffell – How about this Bruce. I'm going to stop you right here before this gets any further. The planning commissioners who have been duly appointed have before them the criteria for a conditional use. They have the question that they need to ask. They can now formulate on their own the conditions to recommend to the city council. I would advise you to allow them to do what they have been appointed to do.

Bruce Parker – Advise accepted. But now as the City Planner it's my responsibility to provide my input to the planning commission. Mr. Taylor and members of the planning commission just simply remember that every conditional use permit is different. They are all unique and you cannot compare one to the other. There is no goalpost moving going on here but the conditions, the reasonable conditions, that would apply would be different from one situation and one location to another depending on the nature of the location, the use, the structural loci. So there is no need to compare, what there is a need to do is to be reasonable and comply with the ordinance.

John Taylor – But Bruce, you have to have a reasonable reason to move those goalposts. If we have the same setup, basement, upstairs things like that...

Vicky Lyon – John, can I interrupt for just one second. We will give you three minutes to make your point because we are already off the format of our public hearing. It's been closed and technically we aren't supposed to have any public comment after it is closed.

John Taylor – I understand but with respect I am not the public I am the applicant and I am responding to the City Planner.

Vicky Lyon – No, that's fine. I want to make sure you have the benefit of

John Taylor – I'm not trying to be a jerk. I understand that every case is different but...If I'm coming in for a conditional use permit to and I want to go a foot past my property line and you have allowed someone else to go a foot past their property line then I should be allowed to do the same as long as all the conditions are the same. That's all I'm saying. Let's just keep it equitable. And not try to move the goalposts just because people don't like the Taylor's. I'm not saying that is the case. I just want to make sure that I am being treated the same as the Hirschi's. That I am not being required to do anything additional. If you had denied the Hirschi's I would not be here today. But I've got an apples to apples application with the Hirschi's. So if it's not going to be approved I am going to need a little more than yours is a unique situation.

Vicky Lyon – So with our deliberation moving forward, I will read the general standards for a conditional use permit. Everybody has the ordinance.

Vicky Lyon reads:

**General standards applicable to conditional uses.**

The commission shall review the particular facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that each use of the proposed location.

1. Will in fact constitute a conditional use as established in this title for the zoned district involved, in that it is not already defined as a permitted use in this Ordinance.
2. Will be in with harmonious and accordance with the general objectives or with any specific objective of the comprehensive plan and/or the zoning ordinance;
3. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;



4. Will not be hazardous or disturbing to existing or future neighboring uses;
5. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protections, drainage structures, refuse disposal, water and sewer and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
6. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
7. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise smoke, fumes, glare or odors;
8. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic surrounding public thoroughfares;
9. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

Supplementary conditions and safeguards may be required. In granting any conditional use, the commission may prescribe appropriate conditions, bonds and safeguards in conformity with the title. Violations of such conditions, bonds or safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this title.

So with that...

Mark Lowe – I would like, just as discussion, as we are setting conditions on the conditional use.

I think it's important for us to go through and basically codify what has been applied for in the cover letter. One of those is that the portion of the home that will be used will sleep eight guests. So if, we should put allowing up to eight people or whatever restriction we deemed appropriate, it has 3 bedrooms, 2 bathrooms and a large loft bonus room. Each room has a bed and there is a sleeper sofa in the great room on the main floor. There is no mention of kitchen or cooking facilities for the guests to use. So that should be, in my opinion, part of the conditional use. For a little bit of... and I don't know that I would want to push it to that extent but it says, "The on-site managers who are members of our family who will also be providing breakfasts for those renting the house. The managers will be living in the basement portion of the house." To me, that implies that they

are going to be blood relatives living there not just coming when there are guests are staying there. I hate to be that restrictive and say that someone has to be there all the time.

John Taylor – We didn't realize that was going to be codified. The point is that there will be an onsite manager whether it is someone we hire or someone who wants to come live in Lava free for the summer.

Mark Lowe – And that's where, I think we need, Where this is what is being proposed. I would be hesitant to require that they be a blood relative. But that is what Michelle (Taylor) proposed.

Hudson Saffell – To your point Mark, the definition of a Bed and Breakfast in our most recent code in the Lava City Business and special event code 2021-4 "A dwelling for compensation meals are provided on site for no more than fifteen persons who are not immediately related to the household family residing in the dwelling and is owner or manager occupied. An owner or manager is required to be present in person on-site when guests are present.

Mark Lowe – Right

Jeanie Avery – So not just at mealtimes.

Hudson Saffell – But, that doesn't mean that they have to live there when no is there.

Mark Lowe – That's what I say. But that is not what was put forth. So. Like I say I wouldn't suggest that that's what we should require. So I threw that out there for discussion as much as anything else.

Hudson Saffell – According to code you have 30 days to make a recommendation. You don't have to make it tonight.

Mark Lowe – And our recommendations is just that. It is a recommendation. It's not an approval or disapproval of anything.

Vicky Lyon – Jeanie do you have any questions?

Jeanie Avery – So you're saying that a decision doesn't need to be made by this panel tonight. I would like time to discuss it with the rest of the panel before a decision is made.

Mark Lowe – Let's discuss.

Lisa Guthrie – Council will meet in two weeks and they probably want something on their agenda. They meet June 8<sup>th</sup>.

Mark Lowe – And thirty days will not get us to our next meeting. So we would have to have a special meeting prior to that to make our Recommendation. What would you like to talk about Jeanie?

Vicky Lyon – In all fairness to Jeanie. She is new.

Jeanie Avery – It's obvious I'm brand new here. I would like to discuss, just us what has happened in the past.

Mark Lowe and Vicky Lyon – We can't do just us.

Jeanie Avery – That answers that.

Vicky Lyon – If you feel like you need to do research. You need to be comfortable. So your level of comfort is that you need to do research before we make a decision and that's fine. But we can't have discussions on it outside of a public meeting. So when is the next city council meeting? Jeanie is the 24<sup>th</sup> long enough? Jim can't the 24<sup>th</sup>. If four of you are available 5pm on Wednesday. Time for Jeanie to do research. 4:30 pm on Wednesday the 24<sup>th</sup>.

Motion to table the discussion until 4:30 pm  
Wednesday May 24, 2023.

Motion by Jeanie Avery  
Second by Mark Lowe

All Aye

Vicky Lyon – We have a public hearing for the Betty property at 343 W Elm scheduled for June 26, 2023.

Hudson Saffell – I put this on here for you to have a preview of what this was about. He will be getting rid of the current sheds and putting up a new one. Just replacing the existing. We will also be having the public hearing for the Junto agreement.

Vicky Lyon – discussion on the Comprehensive Plan.

Hudson Saffell – I put this on there, I'm wondering why we are not involving the Chamber and the Foundation. My vision is why don't we have a town hall meeting at the school, and interview all of the citizens to discuss the future plans.

Vicky Lyon – A town hall is a great idea. That is what we did back in the day. We had it at the community center and every one was invited.

Motion to adjourn.

Motion by Jeanie Avery.

Second by Lisa Guthrie.

All Aye