

Minutes of the Regular Meeting of the Lava Hot Springs Planning & Zoning Commission held Monday, July 26, 2021 at 6:30 p.m., Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho. Guests were invited to participate in person or by teleconference through Zoom by calling (408) 638-0968, meeting ID number is 5731543907#, password 745563#.

Present:

Neil Anderson, Chairman participating by teleconference Canda L. Dimick, City Clerk
James Page, Commission Member
Curtis Waisath, Commission Member
Vicky Lyon, Commission Member

Excused: Fred Hinz, Commission Member

Guests: DeeAnn Transtrum and Leah Navarro.

Neil Anderson, Commission Chair was participating by teleconferences and asked Vicky Lyon, Commission Member to officiate the meeting. Vicky Lyon, Commission Member called the meeting to order at 6:40 p.m.

Approval of Minutes

Canda Dimick, City Clerk informed the commission that she only has the June 28, 2021 minutes transcribed through the portion relating to DeeAnn Transtrum's public hearing and recommended that the commission only consider approving the portion relating to DeeAnn Transtrum's variance application. The minutes need to be attached to the facts and findings that go to the City Council. Vicky Lyon, Commission Member mentioned some spelling errors. Canda Dimick, City Clerk noted corrections. James Page, Commission Member made a motion to accept the June 28, 2021 minutes with corrections as recommended by Canda Dimick, City Clerk. Motion was seconded by Curtis Waisath, Commission Member. All commission members in attendance voted aye.

Written Facts, Findings and Recommendation regarding rear/side yard setback variance - R-3 Zone; Legal Description Lots 8, 9 & 10, Block 7, A.W. Halls First to Lava Hot Springs, Bannock County, Idaho, Physical Address: To Be Determined – DeeAnn Transtrum, Owner/Applicant

The following Statement of Facts, Findings and Recommendation was read into the record by Vicky Lyon, Commission Member officiating:

STATEMENT OF FACTS

1. The Applicant is DeeAnn Transtrum, 9525 W. Gibson Jack Road, Pocatello, ID 83204.

2. Applicant owns real property described as Lot(s) 8, 9 and 10, Block 7, A.W. Hall's First Addition to Lava Hot Springs, Bannock County, Idaho, as the same appears on the official plat thereof, filed in the office of the County Recorder of Bannock County, Idaho.
3. The Applicant requests a rear/side yard setback variance for a single family dwelling.
4. The property is presently zoned R-3 as established by Ordinance 1983-2 and in accordance with the zoning map of the City.
5. A Public Hearing was held before the Planning and Zoning Commission of Lava Hot Springs, Idaho, on June 28, 2021, at the Lava Hot Springs City Hall. The Applicant was present at the meeting and made comments concerning the request for a variance. Mary Hinz was present at the hearing and made comments in opposition. An email supportive comment received from Scott Sherman was read into the record. There were no neutral to the application which have been duly considered by the Commission. A copy of the guest register and public hearing signup sheets are attached. A recording of the Public Hearing is on file at City Hall. A Notice of Public Hearing was published in the Idaho State Journal, the official newspaper of the City on June 13, 2021. A true copy of the Notice of Public Hearing along with the transcribed approved portion of the minutes relating to the public hearing and commission recommendation motion of the June 28, 2021 Regular Planning & Zoning Commission meeting are attached to and made part of these findings. Canda Dimick, City Clerk, presented staff report at the hearing. Copy of the staff report is attached. Notices were mailed out to all neighboring property owners within the zip code area by regular mail on June 13, 2021. Certified notices with returned receipts were mailed to all neighboring property owners outside of the zip code area except for Century Link on June 13, 2021. Returned receipts have been received by everyone except for Debra L. Narusis Trust, Barbara Coburn/Betty Coburn, Raymond T. Ware, Leonard J. Ware, Stephen & Sara Roberts and Marsh Valley School District #21.
6. Attached to these findings is the Application for variance consisting of the application, a warranty deed submitted by the Applicant, a letter from DeeAnn Transtrum dated June 7, 2021, setting forth the Applicant's request, a map of the City of Lava Hot Springs, Idaho, wherein the proposed area is designated in black, a copy of the zoning map, elevation renderings of the proposed single family dwelling structure, address to be determined and a site plan map. Also attached and made a part of these findings is the emailed comment received from Scott Sherman.

FINDINGS

1. At the Public Hearing the following facts and findings were considered.
 - A. The parcel is a corner lot divided off from an existing home with garage prior to 1993.
 - B. The lot is an irregular corner lot making it hard for the property owner to fit a home on and maintain setbacks and provide off-street parking.
 - C. Due to the existing berm on the north side of the property, mature trees along the north, west and south sides of the property that the owners desire to retain and the steep incline of the slope from north to south it makes it difficult for the owners to orient the house in such a way to meet all the setbacks.

- D. The property owners mentioned that the home is their retirement home and that they are aging and do not desire to have to deal with steps.

RECOMMENDATION(S)

The Planning and Zoning Commission of Lava Hot Springs, Idaho, recommends to the Mayor and City Council approve the setback variance due to the fact that it is a corner lot and it is an odd shaped lot and it has nothing to do with slope or the topography of it but because of the shape of the lot IT IS A CORNER LOT and that is why a variance should be allowed.

PASSED AND APPROVED THIS 26th DAY OF JULY, 2021, BY THE PLANNING AND ZONING COMMISSION OF LAVA HOT SPRINGS, IDAHO.

Canda Dimick, City Clerk reported that she did correct the spelling errors in the document as it was read and questioned commission member's if there was anything that they felt that she might have missed in preparing the document that they want listed. She reported that she tried to compile everything that were comments into the four finding items and that she worded the recommendation from the motion made recommending approval. Canda Dimick, City Clerk asked commission members if they see changes that need to be made to the written document. Vicky Lyon, Commission Member commented that she does not have any. Curtis Waisath, Commission Member commented that he felt like everything was pretty well covered.

Canda Dimick, City Clerk asked commission members if they felt like the setback area should specify distances. The distances varies from fifteen (15) feet to eight (8) feet across the back. Vicky Lyon, Commission Member commented that the minutes will be attached to the recommendation and it is all covered in the minutes. Canda Dimick, City Clerk confirmed that the minutes will be attached.

Vicky Lyon, Commission Member commented that the only extenuating circumstances are 1) the corner lot as definitely pointed out and 2) the odd shape.

Vicky Lyon, Commission Member officiating entertained a motion to accept and pass onto City Council. Curtis Waisath, Commission Member made a motion to send the statement of facts for DeeAnn Transtrum's application request for a side/rear yard variance onto City Council. Motion was seconded by James Page, Commission Member. All commission members in attendance voted aye. Vicky Lyon, Commission Member officiating asked Neil Anderson, Commission Chairman participating by teleconference if he heard the motion. Neil Anderson, Commission Chair responded with a "yah". Canda Dimick, City Clerk asked Neil Anderson, Commission Chairman if he was voting. Neil Anderson, Commission Chair responded with "aye". Vicky Lyon, Commission Member officiating declared vote as unanimous.

Approval of Minutes

Canda Dimick, City Clerk questioned Neil Anderson, Commission Chair participating by teleconference if he had voted on approving the minutes. Neil Anderson, Commission Chair responded that since he wasn't there that he didn't. Canda Dimick, City Clerk stated that she will record Anderson's vote on approving the minutes as abstained. Neil acknowledged that he was in agreement with "yah".

Man Stuff Business License Application for a yard sale home occupational business in an R-2 Zone – 171 West Booth – Kevin Delaney, Owner/Applicant

Copies of the business license application was in the commission members packets. City Clerk reported that the reason that the license is being brought before the commission is because the applicant has already exceeded the amount of times that a yard sale can be held at his residence which now moves it to operating a business.

The business license ordinance provision regulating yard sales and the zoning ordinance home occupation definition applies. The commission asked Canda Dimick, City Clerk to provide the definition/provision for them to review and time was taken for her to provide them.

Curtis Wasisath, Commission Member questioned if the only reason that the commission is reviewing the license is because it is operating in a residential area; because the commission has never ever had another business license come before them. Vicky Lyon, Commission Member reported that the commission has had a business license come before them for a home occupation being proposed on East Elm Street to determine if it was an approved use for the area and that is why the commission has been asked to review the Man Stuff license. The commission has been asked to review and determine if it is an approved use and meet the criteria for a home based business.

Canda Dimick, City Clerk read the following provision from the business license ordinance:

3-1-4: EXEMPTIONS

7. The conduct of garage, yard or similar sales by persons at their residence not exceeding twice in one calendar year and not to exceed three (3) days each, which sales shall not include business inventory or items that have been purchased for the purpose of resale.

Canda Dimick, City Clerk explained that because the applicant has exceeded the exemption in the business license provision he was required to apply for a business license.

Neil Anderson, Commission Chair participating by teleconference commented that he has some questions and was asked to hold on a minute until the definition for a home occupation was read.

Vicky Lyon, Commission Member asked that the last line in the business license exemption provision be read again. At a garage sale you can't be selling stuff that you bought specifically for resale. Vicky Lyon, Commission Member commented that a garage sale is when you are cleaning out your garage and selling extra stuff. She feels that the issue with the license is that it would be hard to get around because she doesn't think that the sales are all stuff that the applicant has laying around his house.

Vicky Lyon, Commission Member read aloud the following zoning ordinance home occupation definition provision:

HOME OCCUPATION. Any gainful operation, profession or craft, which is customarily incidental to or carried on in a dwelling place, and wherein the use is clearly incidental and secondary to the use of the dwelling for dwelling purposes, and which occupation is carried on only by the immediate members of the family residing within the dwelling, and which meets all of the following conditions.

- A. The use does not change the character of the dwelling.
- B. Not more than one-half (1/2) of the area of one (1) floor of said dwelling is used for such use.
- C. No external alterations or construction of features not customarily in dwellings is involved, and no external indications of said home occupation except for a sign as provided in this Ordinance.

Vicky Lyon, Commission Member officiating entertained comments from the commission and stated herself that she would say that the business can't operate outside. Curtis Waisath, Commission Member questioned why a yard sale can't be outside. Vicky Lyon, Commission Member explained that under the definition of home occupation, which is a permitted use in the R-2 Zone you can't operate a business that has any external alterations or construction of features not customarily in dwellings, and no external indications of said home occupation except for a sign is permitted.

Neil Anderson, Commission Chair participating by teleconference commented that in his mind the business is directly opposite of a yard sale. A yard sale is where you bring your stuff out on the yard and let people drive by and see it. If the applicant is going to be doing the same thing with the home occupation it is going to be a violation of the ordinance and is going to be opening a great big can of worms. The license is skirting the regulations that limits the number of garage sales that a person is allowed and if it is permitted for one, the city is going to have dozens of them and it is not going to be a pretty situation. Vicky Lyon, Commission member agreed.

Vicky Lyon, Commission Member stated that unfortunately under home occupation it has to be inside of a dwelling and the only external signage of it would be a sign out front stating that there is a business there.

Curtis Waisath, Commission Member commented that the applicant is asking for a yard sale. Vicky Lyon, Commission Member acknowledged that he is asking for use of the yard. The yard sale provisions in the business license ordinance permits two yard sales a year.

Vicky Lyon, Commission Member stated that she doesn't see where the commission can find any way to help the applicant out.

Neil Anderson, Commission Chair participating by teleconference questioned where the applicant is going to get all the material to sale if he isn't buying it some place and bringing it home with the intent to resale. Commission members agreed that it is resale.

James Page, Commission Member commented that in his opinion, nobody has that much stuff and it says right in the ordinance that you can't buy stuff and resale it.

Curtis Waisath, Commission Member commented that in order to have a year around yard sale business the applicant would have to have a lot of stuff.

Vicky Lyon, Commission Member reiterated that the owner is allowed to have two garage sales a year but technically he can't have two unless it is excess stuff that he is selling.

Curtis Waisath, Commission Member reiterated that he can't understand how a person can have a yearlong business license for a yard sale; it would seem like you would run out of stuff.

James Page, Commission Member mentioned that if the applicant is wanting to establish an Ebay account and sell his stuff over the internet that would be a home based business but when you pack it into your yard and try to sale it, that is a different story. Commission members agreed.

Curtis Waisath, Commission Member commented that the owner would almost have to have stuff, buy it and sale it and buy it and sale it in order to keep operating for a whole year. Commission members agreed.

All commission members agreed that the owner could operate a home based internet business to sale items out of his house; nobody would see it.

James Page, Commission Member expressed that he thinks the neighbors will complain because of a junked up yard twenty-four seven and people wandering around all of the time.

Vicky Lyon, Commission Member stated that she does not see where the use fits into any of the city's ordinances.

Motion was made by Curtis Waisath, Commission Member recommending to City Council to not approve/deny the business license.

Canda Dimick, City Clerk questioned the commission about their opinion if the applicant changes his license to Ebay internet sales. Commission members stated that it would be fine as long as the business operated inside the house like the ordinance says. If the applicant choses to make sales through the internet he will need to come back to the City with a different approach.

The motion made by Curtis Waisath, Commission Member recommending to City Council to not approve/deny the business license was seconded by James Page, Commission Member. All voted aye, unanimous.

Other Business - Miscellaneous

There was no other business.

Schedule Next Meeting

Next regular monthly meeting will be August 23, 2021. Commission members were reminded that they have a development ordinance work session with mayor and city council tomorrow night, July 28th at 6:30 p.m. Vicky Lyon, Commission Member, reported that she will not be able to attend and will zoom in for the meeting tomorrow night and also the meeting on August 23rd. Neil Anderson, Commission Chair mentioned that he hopes to be able to attend the meeting on August 23rd in person but maybe not.

Adjournment

Motion was made by Curtis Waisath, Commission Member and seconded by Neil Anderson, Commission Chair to adjourn. All voted aye, unanimous. Meeting adjourned at 7:05 p.m.

Vicky Lyon, Officiating Commission Member

Canda L. Dimick, City Clerk