

Minutes of the Regular Meeting of the Lava Hot Springs Planning & Zoning Commission held Monday, May 24, 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, Commission Chair
Fred Hinz, Commission Member
James Page, Commission Member
Curtis Waisath, Commission Member
Vicky Lyon, Commission Member

Amantha Sierra, Office Assistant
Lindsey McCulloch, City Code Enforcement
Kenneth Fagnant, Fire Chief

Guests: Julie Fagnant, Dave Naegele, Victor Lyon, Mary Hinz, Phil Beeson, Tom McBride, Kim Harris, Jon Thomson, Megan Reno, Steve Toly and Heather Chrisensen.

Neil Anderson, Commission Chair called the meeting to order and mentioned that it started a few minutes late.

Approval of Minutes

Due to the absence of the City Clerk who is joyously enjoying Hawaii it was announced that there were no minutes to approve. Motion was made by Curtis Waisath, Commission Member and seconded by Fred Hinz, Commission Member to table the minutes until a later meeting. All voted aye, unanimous.

Public Hearing for the purpose of giving consideration on a Conditional Use Permit for a Bed & Breakfast – R-2 Zone; Legal Description Lots 8, 9 & 10, Block 1, A.W. Halls Second Addition to Lava Hot Springs, Bannock County, Idaho, Physical Address: 186 North 4th West #1 (Triplex) – Heather Christensen, Owner/Applicant

Neil Anderson, Commission Chair called for a motion to open the hearing.

Motion opening the hearing.

Motion was made by Fred Hinz, Commission Member to open the public hearing for Heather Christensen. Motion was seconded by Curtis Waisath, Commission Member. Neil Anderson, Commission Chair reiterated that it has been moved and seconded to open the public hearing in regards to a request from Heather Christensen for a bed and breakfast and called for a vote. All voted aye, unanimous.

Staff Report

Lindsey McCulloch, City Code Enforcement Officer was asked if she had the staff report. She reported that she did and questioned the commission if they wanted to wait for Heather because she is almost here. Neil Anderson, Commission Chair questioned if Heather would be participating on the

phone or in person. Lindsey McCulloch, City Code Enforcement Officer reported that she had just called Heather to see where she is at and she is almost here.

Conflict Disclosures

James Page, Commission Member informed everyone that he needed to excuse himself at this time from the public hearing due to a conflict of interest because he lives within the impact zone.

Vicky Lyon, Commission Member also stated for the record that she also owns property within the three hundred (300) foot radius and that she does not have any comments to be made but she feels that she can participate in the discussion as a Commission Member but she will be abstaining from voting.

Staff Report Continued

Lindsey McCulloch, City Code Enforcement Officer reported that the date for Heather Christensen's application for conditional use public hearing notice was published in the Idaho State Journal on May 7, 2021. Mailings were mailed to all property owners and residents within three hundred (300) feet of the exterior boundaries on May 4, 2021. Regular mailings were mailed to all property owners and residents within the zip code area. The certified letters have been received from everyone except for the following; the school district, Gary Hall and Bannock County Planning and Zoning. Lindsey McCulloch, City Code Enforcement Officer stated that she did receive Century Links today. There was a written letter opposing the bed and breakfast received from Bruce Bronson and another one opposing it received from Jim and Lyn Page.

Vicky Lyon, Commission Member asked Lindsey McCulloch, City Code Enforcement Officer to clarify zoning. In the Christensen's letter it states the triplex is located in an R-3 Zone however on the commission's agenda it states it is in the R-2.

Lindsey McCulloch, City Code Enforcement Officer reported that she thinks the applicant is confused because in the letter she also mentions surrounding zones and she thinks her house (triplex) is in three or four different zones.

Vicky Lyon, Commission Member asked what zone the triplex is in.

Lindsey McCulloch, City Code Enforcement Officer reported that the triplex is in the R-2 Zone.

Vicky Lyon, Commission Member clarified that the structure does not border a commercial zone on one side.

Applicant's Comments

Heather Christensen, Applicant joined the meeting in person and apologized for being late.

Neil Anderson, Commission Chair informed Heather that she had arrived just in time to tell the commission about what she wants to accomplish.

Vicky Lyon, Commission Member asked to back up so Heather knows that Jim Page is on the Planning & Zoning Commission however he has dismissed himself from participating as a commission member this evening because he lives in the impact zone and that she is also in the impact zone and

that she will be participating in the discussion but she is not going to vote.

Heather Christensen, Applicant responded with an OK.

Vicky Lyon, Commission Member also mentioned to Heather that a clarification was just made that on the commission's agenda it states that her property is in the R-2 Zone however in Heather's letter it is stated that there is commercial zoning on one side and the house (triplex) is located in the R-3 Zone and that is incorrect.

Heather Christensen, Applicant stated that it's the neighborhood where she is at. It is not for her property. It just happens to be the corner lot that her structure sits on. One side adjoins commercial and one is? Heather asked to be corrected and questioned if the R-3 is the zone that does not need permission for a B & B.

Vicky Lyon, Commission Member informed Heather that her property is in the R-2 Zone.

Heather Christensen, Applicant stated that one side is commercial, one side is R-3 and two sides are R-2.

Vicky Lyon, Commission Member felt that the Commission needed to get the zoning map out to clarify the zone because the commercial zone is on both side of Main Street to the south side of the street that is North of Main and then the South side of Elm Street is commercial.

Lindsey McCulloch, City Code Enforcement Officer provided a map showing the location of Heather's property and it is located in the R-2 Zone.

Vicky Lyon, Commission Member questioned where the commercial zone is that Heather feels is surrounding her property.

Heather Christensen stated that she does not feel that her property sits in the commercial zone.

Several commission members commented in unison that her property is a block off of the commercial zone.

Heather Christensen, Applicant asked commission members to show her on the map and they did. Heather's property was oriented with the LDS Church that sits across the street, another house that sits across the street, the alley and Portneuf Street that adjoins her property.

Everyone seemed to understand and acknowledged that it was all clear.

Letters received and read aloud for the record.

Neil Anderson, Commission Chair asked Lindsey to read the letters the City had received.

Lindsey McCulloch, City Code Enforcement Officer read the letter aloud received from Bruce Bronson. To the Lava Hot Springs Planning and Zoning Commission.

Phil Beeson, guest requested that Lindsey please turn so that guests can hear what is going on.

Lindsey acknowledged Phil's request and continued to read aloud Bruce Bronson's letter....The area under consideration as far as I know is a residential area with homes for retired occupancies, multi-family residences and a religious establishment. I walk by this area every day and witness the culture aspect of the diverse population in the residents in this area. Why mess up such a residential area just for the sake of an obvious profit motivated plan? Like I said, I walk by this place daily and so far I see no residents living at 397 West Spring like the Christensen's imply. Occasionally a vehicle will be there but will be gone for days. If this is their home, then why aren't they living there now? This to me brings up many questions. #2 The LDS Church and one of the neighbors. My concern is during services will this

business impair in anyway the rights to religious freedom? Would members experience a quiet, calm, serene atmosphere? There seems to be adequate parking for members but what about funerals and special events held at this church establishment? Could this business interfere with these activities? 3) I am also anxious about further development. Once you open the gate, will we be setting a precedence for more businesses impacting the area like this one, only worse? This is a real concern, there are areas more adaptable to these types of businesses in this country for instance. #4 Traffic and parking. I read the plan and understand the Christensen's proposed idea and I cannot buy it. I feel like once they establish the B & B there probably will be changes because of greed and unconcern for Lava Hot Springs home owners pride and permanent resident's ideals. More cars, more stranger people from all over the world. I also would like to bring up garbage collection. Would we experience B & B tenants use? B & B tenants use our personal garbage dumpsters as they walk downtown. Yes this happens all the time. Personally I do not want this business in this area because of my experience with a vacation home across the street from me. Owner is from out of state, like the Christensen's. Have had as many as thirteen cars parked on the streets in front of my home. (Lindsey personally commented that he worded that wrong. It is supposed to be the vacation rental across the street has thirteen cars parked on the street.) Sometimes close to thirty plus individuals on weekends. People with this type of an agenda typically have income in mind more than serving the city with positive business ideas. Money is a high motivator for expanding. I am against this B & B plan by the Christensen's for the above reasons and I hope we can weather these types of businesses for the short term anyway. I have been a resident of Lava Hot Springs for most of my life and I would like to enjoy the rest of my life in this town of fun recreational areas, community facilities and a safe and reasonable existence. Signed Bruce Bronson.

Lindsey McCulloch, City Code Enforcement Officer read the next letter aloud received from Jim and Lyn Page. This property is in a residential area. It is three separate units with three separate addresses. It is not a home. It is three homes and a B & B is a home where you rent a room in your home. This would be considered a motel and you can't have a motel in an R-2. That's what Main Street is for. That's what the commercial zoned area is for. We do not want a B & B or motel in our residential area. There is a small amount of voters in this town and we have rights and we vote no to this.

Those in opposition:

Neil Anderson, Commission Chair questioned if there were guests in attendance who wished to speak in opposition. List of guests who signed up to testify in opposition of the application was given to the commission.

Neil Anderson, Commission Chair called Hartman "Kim" Harris to come to the front so that he is closer to the microphone to speak.

Hartman "Kim" Harris, lives at 37 East Booth Street, stated that he has been a resident of Lava Hot Springs for almost thirty years. Kim stated that he is against any of the rentals. He is against any of the Bed and Breakfasts that aren't in the proper zoned areas because he sees the privacy of residents being eroded. He reported that he has that kind of situation up by his house with illegal rentals and it's a noise factor on a constant basis every weekend. Normal people don't go down and party every weekend and don't have three or four couples at a time in one tight location. When we start having people buying the properties in town and turning them into bed and breakfasts or into vacation rentals,

we eliminate the permanent residents for families to develop and grow and we lose our families growing in the community. We are going to lose our school. We lose our sense of wellbeing for the residents that live here and it becomes a totally tourist town. He thinks that the reason the City has commercial properties set up for rentals was the foresight of the people who did it to prevent this from happening.

Applicant's Presentation

It was brought to the Chairman's attention that the applicant should have given a presentation before opening the floor for input from guests. Neil Anderson, Commission Chair apologized and asked Heather if she would like to give a presentation.

Heather Christensen, Applicant acknowledged that she would.

Heather introduced herself. She is new to Lava. She reported that she does not have anything formal planned. She acknowledged that she did hear about the letters and she did just hear what Mr. Harris said and she completely understands. They are all reasonable concerns. She expressed that some of the statements that have been made are more umbrella. She stated that they have moved to Lava and they do plan on living in Lava. The property is being renovated at this time so she is not in Lava the entire time. There are times that she has to go back to Salt Lake City, for example, she goes to the Huntsman Cancer Center. There isn't one in Lava so she travels to Salt Lake which is two and a half hours away; it is not a big deal for her. She likes her doctor and is bonded to her doctor and willing to travel so she goes there. She has kids. Her son is in elementary school. He home schools. She has talked with him about going to school in Lava. Heather stated that they don't plan on moving in and breaking down the neighborhood or having people that rent from them that are parties. They have a family and they care about the environments that they are in. They are financially motivated to B & B. She stated that she will not say that they are not because what other reason would an individual do that other than to make money. She said that it is partially because the cost to buy the property was higher and then after they took over there was a lot of deferred maintenance and a lot of work that needed to be done and has been done and it cost to do the work. Heather stated that they don't plan to move in and expand and try to turn the neighborhood into something that it is not. They just want to rent out part of their property and cover their overhead. If their individuals who are renting are calm and reasonable and they are not bringing in a partying environment she doesn't see how it would be different from possibly three families living in the property. They are not looking to rent to three or four groups in their space. That is not what they want. They are putting a lot of time and money into the property. They have grown children. She is a grandmother. She wants her kids to be able to stay in the property. Her plan is to actually rent it out in the summer time to try and help pay for the overhead and then have a place for her kids when they want to come and stay the rest of the time. She stated that is their intentions and they don't intend to do anything other than that. They like it here. She moved to Lava for a reason. She moved to Salt Lake City from Los Angeles years ago because she wanted to live in a smaller place. Salt Lake City has gotten quite large. She has been to Lava multiple times and she enjoyed it so that is why she lives here now. It is not just an overnight thing. They have invested themselves in the community and they plan to do more. She hopes that everyone plans to be open and willing to give them an opportunity because she understands where everyone's concern is coming from.

She sees what is going on and she gets why some might have immediately a negative outlook on what's happening. She has compassion for that and gets it. She asked everyone to please not judge her for what is going on. She is going to live on the property and make it their home. She has a six year old almost seven year old grandson that spends a lot of time with them. She has an eleven year old son. She also has a seventeen year old, an eighteen year old and then a grown man as a son. They have a lot of family and are very family oriented people. They're not just looking for a quick buck but they do want to cover their overhead. She does want to try and mitigate some of the expense that is involved with owning the property.

Those in opposition:

Neil Anderson, Commission Chair called on Victor Lyon to come up and speak. Victor Lyon explained that he is in opposition for the record but he does not wish to speak.

Neil Anderson, Commission Chair called on Phil Beeson to come up and speak.

Phil Beeson has made his home on the corner of Portneuf Street and 4th for 45 years. He has raised three sons in Lava and he is totally opposed to destroy the neighborhood with a bed and breakfast rental. We know what happens in the neighborhood. He was in the business for seven years on Main Street, legal businesses, done nightly rentals and he doesn't feel they know what they are getting into. He commented that the applicant can sit there and say that they are going to control it but the people aren't renting from the property owner. They are renting from Air B & B or vacation whatever. The property owner doesn't know who is going to show up. He can guarantee that things aren't going to be as sweet as they think. Phil stated that he has a couple of things. The structure is a triplex. It isn't a single family home. It is three units. They all have a different address. There are two addressed off of Spring Street and one off of 4th Street. One unit is about 1,600 square feet and has four bedrooms. Phil explained that as he went through the information for the Christensen's triplex, the upstairs shows one bedroom and the downstairs shows one bedroom but the Christensen's letter says there is four bedrooms.

Heather Christensen, Applicant reported that there is one four bedroom unit and two one bedroom units and she doesn't know where the information came from that Phil is referring to.

Phil Beeson went onto say that the plans look like they were drawn up by an engineering company.

Heather Christensen, Applicant invited Phil to walk the property once the remodeling is done.

Phil Beeson commented that he is just stating what the Christensen's put in their letter.

Heather Christensen, Applicant reported that there is four bedrooms and two bathrooms in one unit and two units that are one bedroom/one bathroom.

Phil Beeson commented that the Christensen's map shows that the downstairs unit has one bedroom and the upstairs unit also has one bedroom.

Vicky Lyon, Commission Member questioned Phil what he was looking at?

Heather Christensen, Applicant explained that those are the two one bedroom units.

They both seemed to be arguing over the same thing. Sketch of the floor plan was reviewed and discussed.

Phil Beeson stated that Christensen's floor plan for the unit addressed off of 4th Street shows

one bedroom upstairs and one bedroom downstairs.

Heather Christensen, Applicant clarified that the unit addressed off of 4th street has one bedroom/one bathroom upstairs and three bedrooms, a bathroom and a laundry room downstairs.

It was resolved and acknowledged by the applicant that the floor plan drawing for the unit addressed off of 4th street is not a two bedroom unit. It is a four bedroom unit.

Phil Beeson questioned the meaning of the statement in the Christensen's letter that only two units will be rented at one time.

Heather Christensen, Applicant explained that she plans on rotating so that if she has an opportunity to rent the four bedroom unit that she very well might do it.

Phil Beeson then questioned the applicant where would she be residing onsite. Heather Christensen, Applicant reported that she would then stay in one of the one bedroom units. Her one bedroom units will accommodate four people. The primary people living at the property will be her, her husband and two of her kids.

Phil Beeson commented that the rotation arrangement does not sound like a bed and breakfast.

Heather Christensen, Applicant responded that a bed and breakfast is a facility that provides a place to sleep and food in the morning. She didn't know that there are special parameters.

Phil Beeson read the definition for a bed and breakfast "A home where for compensation a room is rented and breakfast is provided."

Phil Beeson also mentioned that the Christensen's letter does not mention providing breakfast for anyone.

Heather Christensen, Applicant apologized and explained that she thought that was a given because she stated that it would be a bed and breakfast.

Neil Anderson, Commission Chair asked Phil to express his statement and that there shouldn't be any more discussion going on with the applicant.

Phil Beeson agreed to conform and stated that basically his concerns are the same that Kim Harris has, that the letters read stated, the increased traffic, the increase of individuals in the neighborhood that no one knows who they are and neither does the owner know who they are and that is a concern. The neighborhood has been nice and quiet for forty-five years and he would like to see it stay that way. Phil referenced Lava Ordinance 1983-2 that states "A building or group of two or more detached, semidetached, or attached buildings containing guest rooms with automobile parking space provided in connection therewith and designated and intended to be used primarily for the accommodation of transient travelers and which are rented by the day is defined as a motel. He feels the triplex is all attached units and would fall under the motel definition in the ordinance.

Neil Anderson, Commission Chair then called on Ken Fagnant, Lava Fire Chief to come forward and speak.

Ken Fagnant, Lava Fire Chief commented that he is opposed for some of the same reasons that Phil Beeson was talking about. The issue is that if the Commission approves the structure as a bed and breakfast based on the plans that are submitted the commission may be able to color it and squeak it by in city ordinance but it is in violation of the Fire Code. In the intent of the Fire Code a bed and breakfast is a place, a building, a house where rooms are let on a short term basis but you provide food and it has to be owner occupied, that means the owner has to live on premise. It is very clear in the Fire Code. To qualify as a bed & breakfast, you have to look at three things, a place to sleep, a restroom with a

kitchenette or a communal restroom. If all three, a place to sleep, a place to cook and restroom facilities in the same unit are provided that is an individual dwelling unit and does not fall under the cognateness of a bed and breakfast under the International Fire Code. The Christensen's floor plans show a kitchen defined in every unit.

Heather Christensen, Applicant stated that is correct.

Ken Fagnant, Lava Fire Chief continued his statement. He mentioned if that is the case by definition it cannot be a bed and breakfast. If the structure was in the proper zoning area it could be a nightly rental but not in that particular zone. He mentioned that he doesn't want to confuse the applicant because there is a difference when you talk about zoning in using the term R1, R2 and R3 as opposed to the Fire Code R1, R2 and R3. Nightly rentals, anything shorter than thirty days at a time, constitutes transient occupancy or what they call a R1 occupancy and by the Planning and Zoning Commission's own zoning ordinance R-1 occupancies are not allowed in that part of the city. Ken informed the commission that based on the facts he doesn't see where they have any choice but to deny the request. Ken Fagnant, Lava Fire Chief suggested stepping back and assume that the property owner did live on premise twenty-four seven, all the time, anytime that it is rented, owners on site. If this was the case, the applicant could probably talk the commission into granting a bed and breakfast even though it is in violation of the Fire Code. If the applicant was successful in doing that, the minute the property owner moved off premise and rented it for shorter than a thirty day duration the city would have no choice but to pull the occupancy certificate and require the structure to be sprinkled because the minute it is an R-1 occupancy it has to be sprinkled. Some of the folks around that have done recent remodels and changed them to R-1 occupancy, have found that it is very expensive to retrofit sprinklers. Ken encouraged Heather to rethink her plan and maybe look at long term rentals rather than short term transient R-1 rentals. The City has some fire response issues with the simple density that occurs when a property is taken and turned into a transient short term rental. The owner has no real control over how many people are stuffed in the building so instantly; we see it all the time, having opportunities to over occupy a resident because it's lots of money. The owner gets money out of every person that occupies it. They get as many in there as they can get in there and that's great for business but it is not good from a safety stand point. It is not good in the eyes of the Fire Code. As Fire Chief, Ken has some concerns about that. He has seen circumstances where, and he doesn't like the term, but where transients, people who are here short term, they're here today and gone tomorrow. Do they care about the property? No. Do they care about the neighbors? No. Do they care about Fire Code issues? No. The City has had several situations where short term renters who are heading out the next morning dump BBQ ashes in the dumpster and head out of town. They are already back home wherever that may be and the department is responding to dumpster fires. This is just one example of some of the concerns that the department sees from a fire response standpoint to transient occupancies so it has to be controlled in some way. Ken encouraged the commission to go back and look diligently at the Fire Code before considering approving a bed and breakfast in a facility that is obviously set up and designed around a longer term occupancy. It is full service occupancy, with all three things, a place to sleep, restroom facilities and kitchen. It cannot by definition, be a bed and breakfast. Ken asked if the commission had any questions.

Several commission members in unison replied that they did not and thanked him.

Neil Anderson, Commission Chair called Dave Naegle to come forward and speak.

Dave Naegele introduced himself and reported that he used to live in the one bedroom unit downstairs until everyone was evicted. He had lived there for about eleven years and he just wants to say that he understands that the property owner is trying to recoup their money but the property owner knew before they bought the place. Himself and Cody, told her that they would be looking at \$100,000 to fix it. Dave stated that after Ron died nothing was touched. He stated that the rent was cheap. He isn't going to complain about it. Things had ran down hill. Dave reiterated that him and Cody both; Cody lived in Apartment 1, talked to her. First they asked her if they were going to turn it into a nightly rental and she said, no and he told her at that time she couldn't because of the zoning. If the commission wants to override the zoning, then he guesses she can but he questioned how do you stop the next one or say no to the rest of them. Dave stated that when he heard Heather's comment about having to recoup, she knew exactly what it was going to cost. They both told her that she was looking at a \$100,000 plus they know what she paid for the place. The owner knew before they bought it. Dave said that he is not saying that she should be granted the conditional use or not. That it is not up to him. He just wanted to put his two cents in since he lived there and had to get out. Dave informed the Commission that Cody would like to have been able to attend but due to his health he has moved in with his mother in Ammon. Cody has authorized Dave to give out his number to the commission if they would like to talk to him.

Those Neutral

Neil Anderson, Commission Chair called Tom McBride forward to speak.

Tom McBride, Bishop of the Lava Ward expressed concerns with the nightly rentals and the parking issues that have developed. Main Street is packed from one end to the other. If the rentals are expanded over into the Church area, they are going to use the Church's parking lot for ease to keep the streets a little clearer and then on Sundays when the congregation comes in there the Church is going to have issues with parking. Tom explained that there are regulations that the Church has to go through to keep the parking area qualified as a parking lot by blocking it off so many days each week so that it doesn't become a street. Tom mentioned that his other concern is with the offset of the property owner's income. He understands that the owners want to recoup some of the costs but they could rent them out as long term rentals and have control of the issues that have been brought up and those are his biggest concerns.

In Favor

Neil Anderson, Commission Chair asked if there were any written material received in favor. Amantha Sierra, Office Assistant commented no. Neil Anderson, Commission Chair asked if there were any verbal comments in favor. There was none.

Online Participation

Lindsey McCulloch, City Code Enforcement Officer questioned if there was anyone online. Amantha Sierra, Office Assistant reported that there were participants online but she doesn't know who they are. They have not identified themselves. Neil Anderson, Commission Chair asked if there was

someone on line that would like to speak. There was no acknowledgements. It was determined that the participants online apparently did not wish to speak.

Applicant's Response

Neil Anderson, Commission Chairman announced that it is time to give the applicant time to respond to the statements that have been made.

Heather Christensen, Applicant commented that a lot has been thrown at her and she respects it. She hears everyone loud and clear. She just wanted to say that the things that everyone is concerned about she understands why. She questioned why it is not reasonable to give her an opportunity to see if that is going to be the case in her situation. Heather stated that there are a lot of out of state people that purchase property and they don't care but she questions how those concerned know that will be her story or that it will be their scenario or situation. Everyone is different. She stated that you cannot judge everyone based on the actions of some. She could make a good choice. It could be a situation where the neighborhood is not affected by it and the neighbors don't notice. She feels that every concern that has been expressed there is definitely a solution for it. She stated that she has not heard one concern that cannot be peacefully resolved if there is an issue like monitoring the people that rent. She stated that she can monitor the people that rent. She is sure that there is a lot of properties that don't but you can and she does intend to. Making sure people don't park in the Church's parking lot. She thinks it is actually reasonable and there is a way to prevent people from parking in the Church's parking lot and they can request that they don't do that. Heather restated again that they are not looking to fill their property and stuff it with people. That is not what they are looking to do. She feels that the truth is by doing a B & B they can make more money than they can if they do nightly rentals to individuals. Heather told Dave Naegele, because she heard what he said about her saying to him that she was not going to be doing nightly rentals or a B & B. She said that she told him that they did not know what they were going to do with it. Heather stated that she did not want Dave to; he is a very lovely individual and everyone that was living there were incredibly lovely and she went out of her way to make sure that she was respectful and kind in every way. She did not want Dave to feel any different than he did when he moved out because there is nothing to hide.

Dave Naegele commented that he does feel a lot differently. That he has mellowed a little bit.

Heather Christensen, Applicant asked the commission to give her an opportunity and if something isn't right pull her privilege to do it. She asked to be treated how you would want to be treated and to be fair with her. She stated that she gets it; there are a lot of jerks out there and she sees how the locals treat out of starters coming in and she can understand why. She doesn't judge it. Like everyone's energy towards her. She doesn't take it personal. Some day everyone will come around. She is an amazing person, very loving and kind and her goal is to make friends with everyone because she wants to be their neighbor. She wants to be a part of the community. She wants to integrate herself. She doesn't want everyone to judge her based on other people. She is not going to come in and destroy a neighborhood. She feels that if everyone will give her a chance they will see and find it out for themselves. Heather thanked everyone for coming and sharing their concerns. She stated that she really does appreciate it.

In Opposition:

Neil Anderson, Commission Chair reported that he inadvertently skipped Mary Hinz. Neil asked Mary if she would like to speak and she responded that she would.

Mary Hinz, mentioned that she lives at 588 West Spring Street at the bottom of the hill. She has lived there for forty-two years. She commented that her only statement is that before owners purchase property they should research it to find out what is allowed and what isn't allowed and go from there. Don't go in and say let's change it because I want to do something. She stated that she isn't just referring to this particular property. It refers to multiple pieces of property. Just research and see what you can do with it first and then go from there.

Commission discussion.

Neil Anderson, Commission Chair asked Commission Members if they had any discussion. There was none.

Motion to close hearing.

Curtis Waisath, Commission Member suggested closing the public hearing. Neil Anderson, Commission Chair asked Curtis Waisath, Commission Member to make the motion. Motion was made by Curtis Waisath, Commission Member to close the public hearing. Motion was seconded by Fred Hinz, Commission Member. All voted aye, unanimous.

Recommendation regarding Conditional Use Permit for a Bed and Breakfast – R-2 Zone; Legal Description Lots 8, 9 & 10, Block 1, A.W. Halls Second Addition to Lava Hot Springs, Bannock County Idaho, Physical address: 186 North 4th West #1 (Triplex) – Heather Christensen, Owner/Applicant

Curtis Waisath, Commission Member commented that he would like to say something about the bed and breakfast. Neil Anderson, Commission Chair advised the commission that the discussion is to be amongst themselves and decide what to do.

Curtis Waisath, Commission Member referred to the definition of bed and breakfast. He commented that he would like to read a couple of words from it. The definition reads a dwelling where for compensation meals are provided. He then referred to the definition of a dwelling. The definition reads a building, a portion thereof designed to use as a principle residence. Then he referred to the definitions for a duplex and a triplex. The definition for a triplex reads a building containing three dwellings. The triplex has three dwellings just like the fire chief said so it really can't be a bed and breakfast.

Fred Hinz, Commission Chair commented that it has three kitchens.

Curtis Waisath, Commission Member reiterated that the structure has three dwellings so consequently she would have to be living in all three of them in order to have a bed and breakfast. He feels you have to have a bed and breakfast in your home, in your dwelling.

Neil Anderson, Commission Chair commented that the kitchen in the other two units is what eliminates the bed and breakfast. It makes it a separate dwelling. Commission Member, Curtis Waisath agreed.

Commission Member Vicky Lyon stated that the zone clarification has to be looked at and the

definitions like Curtis just pointed out. She feels that the other big issue is, she believes with all of her heart, that the owner has good intentions and is going to do what she says she is going to do but the problem is you find out you can't find people to change the beds and clean and what not for you and you decide to sale it then what does the next person do once there is a variance made or that is allowed to happen. The problem is that the City has to look at the long term future and what can go on not just with Heather.

Heather Christensen, Applicant expressed that she could have it in the terms or special exceptions that when she sells it she sells it as a triplex and the special exceptions were made only for her.

Neil Anderson, Commission Chair explained that that does not work. Once permission or a conditional use has been granted to the property, it goes with the property when sold. Vicky Lyon, Commission Member commented that it stays with it. Heather Christensen, Applicant questioned how it would be revoked then. Neil Anderson, Commission Chair responded that you can't. Heather questioned what the gentleman said. Vicky Lyon, Commission Member said that the Fire Chief said that if you are outside of the regulations that the business license could be pulled. Heather replied ok, I got it.

Vicky Lyon, Commission Member questioned what is permitted in the zone. The commission has come to the conclusion that the structure doesn't meet B & B. She questioned if the use could be moved to a hotel. A hotel is not allowed in the zone.

Neil Anderson, Commission Chair stated that as far as he can see Heather has purchased a triplex that is going to have to be used as a triplex.

Heather reported that she did do research and her research is the Idaho State law that basically says that if you own property in Idaho you have the right to do as you choose with it. She does see the exception to the rule that came out in 2013 or 2018 where they said if, with the exception that if it is not damaging to the town but she doesn't understand how her trying to B & B a property would be damaging if she hasn't even been given the opportunity to show that she is not going to be negligent.

Vicky Lyon, Commission Member commented that she thinks the final paragraph in the state legislation says that if the town has zoning in place that supersedes anything; so that is where the city is running into a problem is because the city clearly has zones in place in town. There is commercial zones, there is residential zones, etc., and unfortunately where the triplex sits is R-2 and it doesn't meet the requirements for a bed and breakfast and anything else is not allowed there. Heather feels that the city has other properties that fits the same, not identical but very similar standards and they are being B & B with special exceptions in the town.

Curtis Waisath, Commission Member said that you have to go back to the fact that the structure is a triplex. It is not one unit. There are three units. Heather commented that she does not believe that the structure she is thinking about is a single unit either. She asked if there isn't another property in Lava that is being Air B& B'd and they are two separate properties connected by a breezeway.

Lindsey McCulloch, City Code Enforcement responded to the question with a yes but they are in a commercial zone. Neil Anderson, Commission Chair added that they have a single dwelling that the owner stays in all the time. Ken Fagnant, Lava Fire Chief pointed out that the particular one that is being referred to, the city had this discussion when it was built. The original intent was to make it a nightly

rental and the owner chose not to because of the cost of sprinkling it. It was going to cost the owner \$7,000. The owner went ahead and built it and got an occupancy permit as a bed and breakfast. He is now wanting to move out and he understands that before he can rent it as a nightly rental which is allowed in that particular area that he has to sprinkler it which he is doing right now. It is being installed as we speak to the tune of \$20,000.

Neil Anderson, Commission Chair called for point of order and explained that the hearing has been closed so there should be no more conversation with participants in the audience all though the question was kind of asked of Ken.

Fred Hinz, Commission Member announced that he thinks the commission is ready for a vote. Neil Anderson, Commission Chair replied with well we need a motion one way or the other.

Fred Hinz, Commission member stated that he hates to do this but he is going to have to. Motion was made by Fred Hinz, Commission Member to turn it down and pass it onto the city council. Motion was seconded by Council Member, Curtis Waisath. All those in favor was asked to say aye. Waisath-Aye, Anderson-Aye, Hinz-Aye, Lyon- she stated that she is not voting (Abstained).

Neil Anderson, Commission Chair informed Heather that the commission will send the recommendation to the City Council with a do not permit. Heather Christensen, Applicant replied with "K".

Heather questioned what she would need to do to proceed forward with trying to rezone her property to commercial. Vicky Lyon, Commission Member explained that she would have to go through the procedures of rezoning. Some comments were voiced that it wasn't going to happen. Heather questioned if the commission had information so that she can do a little research. Vicky Lyon, Commission Member advised Heather to get in contact with Canda, City Clerk to see what the procedure is so that she is not telling her something incorrectly. The biggest problem is that the city can't spot zone. The zoning for Heather's property could not be changed in the middle of a neighborhood. It would have to be continuous through. Neil Anderson, Commission Chair explained that for Heather's property to become a commercial zone it has to be continuously connected to a commercial zone. The City can't have spot zoning.

Heather Christensen question about having it converted to an R-3. Neil Anderson, Commission Chair explained that it wouldn't make a difference. The problem is the fact that the building does not qualify for a bed and breakfast. It's the building, not the zoning or anything else. The building does not qualify. It is a triplex. Heather said that so the only thing that she would qualify for would be nightly rentals. Commission Members said no. Heather then said that according to the commission and the rules right now the structure doesn't qualify but if she was it would only be nightly. Vicky Lyon, Commission Member interjected no that it can only be monthly. Heather commented that she can't do monthly rentals; that it wouldn't even pay for the mortgage. Vicky Lyon, Commission Member informed Heather that it would only qualify for as a triplex because of the configuration of the structure. The structure could be tore down and then build a house and rent rooms then it would be a bed and breakfast. Heather said that no she won't do that. Vicky Lyon, Commission Member said that she knows but she is just saying that is what would make it a bed and breakfast. It's the configuration of the structure.

Heather Christensen expressed her appreciation of everyone's time and asked if she will get a

copy of everything so that she has it. Vicky Lyon, Commission Member reported that as soon as the minutes are done, they will be posted online and that Heather can get a copy as well. Heather questioned if it is done. Fred Hinz and Vicky Lyon, Commission Members explained that one of the city staff will have to transcribe and type them up; the meetings are recorded. There seemed to be some confused discussion. Vicky Lyon, Commission Member informed Heather that the commission is finished and that she can be excused if that is what she is asking. Thank you's were exchanged.

Building Permit Ordinance 2021-3

Motion was made by Vicky Lyon, Commission Member and seconded by Commission Member Fred Hinz tabling the building permit ordinance. There was no vote entertained on the motion.

Other Business - Miscellaneous

Vicky Lyon, Commission Member reported that the commission needs to schedule a joint work session with city council and that there were some dates sent out last night. Time was taken to allow Vicky time to locate the message. She mentioned that Bryan Phinney, Keller Associates is available to meet with P & Z/City Council work session on a development ordinance. He can meet May 27th or 28th, June 1st, 3rd or 7th, the 14th, 15th or 17th, July 6th, 12, 15, 19, 20, 26, 27, 29. Fred Hinz, Commission Member questioned how long the work session is going to be. Vicky Lyon, Commission Member thinks that the commission just needs to choose one of the dates. Vicky said that she could commit to June 1st or 3rd or July 6th or 12th. Neil Anderson, Commission Chair expressed that he would like to go soon and get it done with; either the 1st or the 3rd. The commission agreed that if the work session involves two meetings both June 1st and 3rd are acceptable. Vicky Lyon, Commission Member reported that she will text Randy Benglan back informing him that the commission can meet on June 1st at 6:30 p.m. and the commission is also willing to reserve the 3rd for a follow up meeting if needed. Someone questioned Canda's availability. Jon Thomson, Mayor and Amantha Sierra, Office Assistance reported that she will be back by June 1st.

Next Monthly Meeting

Motion was made by Fred Hinz, Commission Member and seconded by Vicky Lyon, Commission Member scheduling the next regular meeting for the 28th of June. All voted aye, unanimous.

Miscellaneous – Christensen Conditional Use Permit Findings

Jon Thomson, Mayor requested that when the commission forwards their findings to the City Council they need to say that we declined because it does not meet the criteria of a bed and breakfast. Please state a reason with it. It makes the City Council's job a lot easier. Neil Anderson, Commission Chair asked Lindsey McCulloch, City Code Enforcement Officer to make sure that it happens. Fred Hinz, Commission Member commented that usually Canda takes care of it. Vicky Lyon, Commission Member asked Lindsey to please include when it gets directed over to City Council that the commission declined it based on the fact that it doesn't fit into the R-2 zoning, it does not fit under B & B definition, and it falls under motel/hotel which is not a use permitted in R-2. Jon Thomson, Mayor added to his initial

comment that otherwise the City Council will be going through the same discussion. Neil Anderson, Commission Chair felt like it could be made a lot simpler by saying it was declined because the building itself did not qualify.

Miscellaneous – June 1st Meeting

Jon Thomson, Mayor reported that the June 1st meeting, includes the zoning commission, City Council and Keller's. There is more than just the five zoning commission members trying to schedule the date. The mayor thinks everyone can meet on that date. Jon explained that what the City is paying Keller's for is two planning meetings and then they write up the ordinance. The meeting will be held at City Hall. The attendance expected and space needed was questioned and discussed. Vicky Lyon, Commission Member offered the use of the Greystone if needed. She has a table that will see twenty-two. Since there will be a quorum attending the meeting an agenda notice has to be posted.

Adjournment

Vicky Lyon, Commission Member questioned if a motion was made to adjourn. Fred Hinz, Commission member stated that he thought a motion had been made. Amantha Sierra, Office Assistant questioned if a motion had been made to adjourn. Vicky Lyon, Commission Member stated that she made the motion to adjourn and that Fred Hinz, Commission Member seconded it. There was no motion made to adjourn on the recording. Mayor Thomson thanked the committee. According to the recording time the meeting lasted one hour and two minutes. There was no written time documented in the staff notes when the meeting concluded.

Fred Hinz, Commission Co Chairman

Canda L. Dimick, City Clerk (Transcriber)