

Minutes of the Regular Meeting of the Lava Hot Springs Planning & Zoning Commission held Monday, November 23, 2020 at 6:30 p.m., Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho.

Present:

Neil Anderson, Commission Chair  
Fred Hinz, Commission Member  
Curtis Waisath, Commission Member  
Vicky Lyon, Commission Member  
James Page, Commission Member

Canda L. Dimick, City Clerk  
Lindsey McCulloch, City Animal Control/Code  
Enforcement Officer

Guests: Jon Thomson, Mayor and Diane Beckstead

Neil Anderson, Commission Chair called the meeting to order at 6:30 p.m.

### **Approval of Minutes**

Neil Anderson, Commission Chair entertained a motion to approve the minutes. Canda Dimick, City Clerk explained that the minutes in the commission member's packets were for just referencing and that there were no minutes prepared to be approved. Motion was made by Vicky Lyon, Commission Member and seconded by Fred Hinz, Commission Member to table the approval of the minutes until the next meeting. All voted aye; unanimous.

### **Public Hearing – Front yard setback variance – Lots 18-20, Block 11, A.W. Hall's 3<sup>rd</sup> Addition – 163 South 5<sup>th</sup> West – Afton Diane Beckstead, Owner/Applicant**

Neil Anderson, Commission Chair stated that in order to open the public hearing he will need a motion to that effect.

Motion was made by Vicky Lyon, Commission Member to open the public hearing. Neil Anderson, Commission Chair asked if there was a second. Curtis Waisath, Commission Member seconded the motion. Neil Anderson, Commission Chair stated that it has been moved and seconded to open the public hearing; all those in favor say aye. All commission members voted aye. Neil Anderson, Commission Chair stated that it was unanimous.

Neil Anderson, Commission Chair explained that the public hearing is in regards to a front yard setback variance for Lots 18-20, Block 11, A.W. Halls 3<sup>rd</sup> Addition. The address is 163 South 5th West and it belongs to Afton Diane Beckstead. Neil Anderson stated "we are looking for input".

Vicky Lyon, Commission Member questioned if the commission could ask questions.

Canda Dimick, City Clerk informed the commission that they have a public hearing procedure to follow; the one given to them. The first thing to do is a staff report.

Neil Anderson, Commission Chair asked the City Clerk if she could give the staff report.

Canda Dimick, City Clerk stated that actually Lindsey McCulloch, City Animal Control/Code Enforcement Officer is going to do it tonight.

Lindsey McCulloch, City Code Enforcement Officer introduced herself to commission members and present staff report. November 23, 2020 the variance for Diane Beckstead. Notice was published in the Idaho State Journal on November 3, 2020. Mailings were mailed to all property owners/residents within three hundred (300) feet of exterior boundaries on October 25, 2020. Regular mailings were mailed to all property owners/residents within the zip code area. She has one unclaimed from SLS, LLC; it was returned on November 21, 2020. She sent an email to Rocky Mountain Power today and a response was received that he had received the information and she has the email instead of the certified letter. The sign was posted on site November 5, 2020.

Diane Beckstead, Applicant stated that “she had an easement when she first put the house in” and “she got an easement for a garage” and she was under the understanding that “we brought in a revised one to put the overhang onto the garage and we had it on and Canda come and said that it wasn’t on that one and then about twenty minutes later the two state guys from the state inspectors come and he pulled it off his computer and said that it is right here and he said that we will go talk to Canda and don’t do anymore on this until I get back with you”. Diane state that the conversation was probably in August so nothing else was done until the spring. Diane stated that she did not hear from anyone so she presumed and she shouldn’t have presumed “I know that now” and she got a call from Lindsey on September 9, 2020 that she needed to come in and apply for a second easement.

Lindsey McCulloch, City Code Enforcement Officer commented that she thinks that the only issue was that the City went through a period of time where the City didn’t have a Code Enforcer and so it was just Canda in the office so she thinks that since the City didn’t have a Code Enforcer it didn’t get caught up and it wasn’t anybody’s fault, it fell lacking the position.

Neil Anderson, Commission Chair asked if there was any public input opposed. There were no oppositions.

Neil Anderson, Commission Chair asked if there was any public input in favor; written or verbal.

Lindsey McCulloch, City Code Enforcement Officer presented the email from Rocky Mountain Power. There were three (3) written comments received in favor of the application. Written comments were received from Michael Jones which is Dorothy Walker-Gates son, Tonya Bunn and Jessie Clark who reported that she is the owner of Shane Allread’s property. Canda Dimick, City Clerk asked for the three written comments to be read into the record.

Tonya Bunn’s written input was read into the record by Lindsey McCulloch, City Code Enforcement Officer. Tonya Bunn wrote “I am writing in support of our neighbors request for an easement on her garage located at 163 South 5<sup>th</sup> West, Lava Hot Springs. Thank you, Tonya Bunn. “

Dorothy Gates represented by her son, Michael Jones’s written input was read into the record by Lindsey McCulloch, City Code Enforcement Officer. Michael Jones wrote “We live across the street at

190 South 5<sup>th</sup> West. Diane has a beautiful home and we are in total support for her request for a variance. Sincerely, Dorothy Gates/Michael Jones.”

Email from Rocky Mountain Power was read into the record by Lindsey McCulloch, City Code Enforcement Officer. Rocky Mountain Power’s email says “received and thank you”.

Jessie Clark, owner Shane Allred’s written input was read into the record by Lindsey McCulloch, City Code Enforcement Officer. Jessie Clark wrote “to whom it concern; thank you for notifying us on the five (5) foot and we are ok with this. I also believe that those improvements to your home with not be detrimental for our property values. Jessie Clark, owner Shane Allred”.

Lindsey McCulloch, City Code Enforcement Officer stated “that those are the only ones that I have received”.

Neil Anderson, Commission Chair asked if there was any discussion from the members of the commission.

Vicky Lyon, Commission Member commented that we can’t have any discussion because it has already been done and she guesses that the commission just needs to continue forward unless someone else has input.

Neil Anderson, Commission Chair asked if anyone else has any input.

Curtis Waisath, Commission Member questioned what it is called; a porch.

Diane Beckstead, Applicant explained that it is an overhang into the garage to keep the ice from the entrance into the garage.

Curtis Waisath, Commission Member commented that the contractor just more or less put a five (5) foot soffit on it to match the rest of the house which looks pretty good to him. He likes it.

Neil Anderson, Commission Chair commented that it looks beautiful.

Diane Beckstead, Applicant apologized for messing up.

Neil Anderson, Commission Chair commented that she did put the City in kind of a quandary but what’s done is done.

Neil Anderson, Commission Chair reported that with no apparent objection he would entertain a motion to approve.

Canda Dimick, City Clerk reminded the commission that the public hearing needs to be closed first.

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

Motion was made by Vicky Lyon, Commission Member to close the public hearing. Neil Anderson, Commission Chair asked if there is a second. Motion was seconded by James Page, Commission

Member. Neil Anderson, Commission Chair stated that it has been moved and seconded to close the public hearing all those in favor say aye. Several commission members voted aye.

Diane Beckstead, Applicant asked the commission if they were done with her. She thanked them for their time and left.

Fred Hinz, Commission Member stated that there is one no.

Neil Anderson, Commission Chair questioned that there is one no?

Fred Hinz, Commission Member stated "ya me".

Neil Anderson, Commission Chair said "ok; Fred has indicated that he's voted no in regards to the thing but you are outnumbered Fred."

Fred Hinz, Commission Member stated "that he knows; I see that."

Neil Anderson, Commission Chair told Fred that he appreciates what he is saying.

Neil Anderson, Commission Chair re-entrained a motion to go ahead.

Vicky Lyon, Commission Member questioned what Fred was voting on. Who made a motion to vote? We voted to close the public hearing.

James Page, Commission Member stated state "that we have not voted on anything yet that I see."

Fred Hinz, Commission Member clarified that the vote was to close the public hearing.

Neil Anderson, Commission Chair clarified that the vote was to close the hearing and now the commission needs to vote on whether or not to approve the easement.

Vicky Lyon, Commission Member questioned Fred's objection on it.

Fred Hinz, Commission Member stated that the thing that it is, like Vicky says it is already done but the problem being.....

James Page, Commission Member interjected that somebody else is going to do it and get away with it because she did.

Fred Hinz, Commission Member stated that's right.

James Page, Commission Member questioned "what do we do to her to detour that?"

Neil Anderson, Commission Chair commented that we set a horrible precedence.

Fred Hinz, Commission Member reported that this is not the second time that she has done this.

Vicky Lyon, Commission Member commented that from the very beginning it should have been stopped when the house was in the wrong place so now since the house is not correct we have to do all these other adjustments.

James Page, Commission Member questioned who didn't catch the house being put in the wrong spot to begin with.

Fred Hinz, Commission Member and Neil Anderson, Commission Chair both responded with "her contractor".

Vicky Lyson, Commission Member reported that she was her own contractor.

Curtis Waisath, Commission Member responded "compliance officer."

James Page, Commission Member followed up with the comment "who we didn't have at the time".

Neil Anderson, Commission Chair explained that the situation was that they put the foundation on the twenty (20) foot setback line and she then wanted to add onto the front of the house. The house should have been set back another ten (10) or fifteen (15) feet but it didn't get caught.

Mayor Jon Thomson commented that there is nothing illegal nor nothing in error of where the house is located is perfectly fine which in this particular case the house has been added onto three (3) different occasions and every one of them has been under a variance. The City Council tries to warn, just throwing this out for education, we try to warn people against being their own contractor's particularly if they do not have the knowledge to do so because not only can they make an error like this, and this is a great example of what can happen, but they are also are automatically responsible for any errors that their sub-contractors make because they are the general contractor. So you might find yourself in a situation where one of your subs made a mistaken and gets a lien slammed on him and it is going to come right back to you as an individual to. It is not a wise thing unless you are very well versed in construction.

Vicky Lyon, Commission Member asked Mayor Thomson what his solution would be for this issue.

Mayor Jon Thomson responded with "that is why I have you."

Vicky Lyon, Commission Member stated that once again the City has ordinances and then we don't enforce our ordinances.

Mayor Jon Thomson responded with "yes we do."

Vicky Lyon, Commission Member stated "no, not all the time."

Mayor Jon Thomson responded with "yes we will."

Vicky Lyon, Commission member commented "that would be good."

Mayor Thomson stated "you have a new commander; yes we will."

Neil Anderson, Commission Chair commented that if the commission votes against the variance she has no alternative but to tear it off.

Mayor Thomson commented that he is not for tearing it off. The only way anything could have been different is to just say you can't build closer to the street. There would have been no porch. That would have been back when; so at this point it's mute. It's always after the fact.

Vicky Lyon, Commission Member commented that she feels it causes a hazard for the snow plow and cars are parked out into the street.

Mayor Thomson commented that parking in the driveway or parallel parking in front of the house still take up the same amount of area but it does present a snow plow hazard that Tony will have to watch for when he goes down that street. It is a gorgeous house. It is hard to say tear it down. He thinks it can be said that let's not let it happen again. At first when she came in with the porch that was one thing, then it was the garage under the electrical lines and then it is the porch extension over the garage. There is a mighty fine porch off the back that could have been a house that way. The commission has done a great job with it. They have followed it all the way through. He is not in opposition of anything or any decisions that the commission has made. It is one of those cases that it is after the fact all the way and there is not a whole lot you can do about it without a lot of undue hardship on her part.

Fred Hinz, Commission Member stated "but the thing of it is what is going to happen down the road?" Just like Jim was saying what if somebody else comes in and does the same thing; asks or doesn't ask for a variance, just go ahead and do it and slap their hands after it is all over with.

Mayor Thomson commented that he has always heard in Lava that it is easier to ask for forgiveness than to obtain permission and sometime and some place we are going to have to change that philosophy. This is a little water under the bridge but it is a lesson learned. He has more coming up that will challenge the commission.

Neil Anderson, Commission Chair questioned if that was the conclusion on the discussion on the easement.

Curtis Wasiath, Commission Member commented that there is not much more that you can do.

Neil Anderson, Commission Chair mentioned that it is kind of between a rock and a hard spot.

James Page, Commission Member said "can't make her tear it down and you can't make her pay more taxes on it."

Neil Anderson, Commission Chair said "well the taxes will be there."

Vicky Lyon, Commission Member commented that the City doesn't have a penalty structure in place for it.

Neil Anderson, Commission Chair called for a motion to approve the easement.

Vicky Lyon, Commission Member questioned if there is four voting and the chair is a tie breaker.

Neil Anderson, Commission Chair stated "that is correct."

James Page, Commission Member questioned "what are we voting for to approve the easement?"

Curtis Waisath, Commission Member explained that the vote is to move it onto the city council and let them take care of it.

Vicky Lyon, Commission member stated "no."

James Page, Commission Member commented that he doesn't like it but what do we do about it; so we got to approve it right.

Canda Dimick, City Clerk read the variance procedure provisions from the ordinance. In acting upon a variance the Commission shall make a full investigation and shall hold a public hearing and shall only grant a variance upon finding the following are true: (1) that the granting of the variance will not be in conflict with the spirit and intent of the Comprehensive Plan for the City, and will not affect a change in zoning; (2) that there are exceptional or extraordinary circumstances or conditions, applicable to the property involved, or the intended use thereof, which do not apply generally to the property or class of use in the district, so that a denial of the relief sought will result in: (a) undue loss in value of the property; (b) inability to preserve the property rights of the owner; (c) the prevention of reasonable enjoyment of any property right of the owner; (3) The granting of such relief will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements of other property owners, or the quiet enjoyment of such property or improvement. Canda Dimick, City Clerk explained that those are the provisions that the commission needs to consider when granting a variance.

Vicky Lyon, Commission Member commented that to tear it off would be a hardship for her now at this point and there is nothing she can do any different. Vicky questioned if there was any more discussion.

Neil Anderson, Commission Chair said "I need a motion."

Motion was made by Vicky Lyon, Commission Member to approve Ms. Beckstead's variance. Motion was seconded by Curtis Waisath, Commission Member. Neil Anderson, Commission Chair commented that it has been moved and seconded to approve the variance for Diane Beckstead all those in favor say aye; all those opposed say nay. Waisath – Aye, Lyon, Nay, Hinz, Nay, Page – Aye, Anderson – Aye.

Canda Dimick, City Clerk asked for clarification on the vote. She was informed that Lyon and Hinz voted Nay and the other three voted aye.

Neil Anderson, Commission Chair commented that he wanted to say no but what do you do.

Commission members agreed that she can't be made to tear it down. It is on record that there was contemplation about it and it will give others the understanding that you may not get to have it, you may have to tear it down.

#### **Other Business – AIC Fall Academies – P & Z Training**

The Commission originally had it scheduled to do the video trainings tomorrow night but the City Clerk has meetings tomorrow so it had to be postponed. The training is online. City Clerk talked with commission members about it last month. Commission members asked the city Clerk to see how long the training was and she is still gathering information on it. As soon as the City Clerk gets the information she will provide it to commission members and maybe a short meeting can be scheduled the first week of December.

#### **Other Business – Annual Appreciation Potluck – Postponed Summer 2021**

Neil Anderson, Commission Chair, announced that the City's annual appreciation potluck has been postponed until summer.

#### **Other Business – Luschar Subdivision**

Copies of the rough sketch of a the concept plan to subdivide a parcel: RPR4227020612, 15.69 acres for the development of eight (8) residential home sites located at the southeast corner of Merrick and Maughan Road west of city limits located within the area of city impact were presented to the Commission for review and discussion at a later date. Developer is needing input by December 11, 2020.

#### **Schedule Next Meeting**

Neil Anderson, Commission Chair questioned if the commission is going to forego the December, 2020 regular meeting. City Clerk advised the commission that they will need to hold a special meeting in December and that it will be up to commission members if they want to hold a meeting at the regular time frame or not. The regular meeting is scheduled for December 28, 2020. Commission members were fine with holding the regular meeting on December 28, 2020 as scheduled.

#### **Other Business – Zoning Ordinance Draft Status**

Neil Anderson, Commission Chair commented that approximately two years ago the Planning and Zoning Commission handed to the City Council the zoning and planning ordinance and it still hasn't been sent back to the Commission to hold a public hearing or anything. Neil Anderson, Commission Chair asked Mayor Thomson if he could give the Commission an indication when they might expect it. Mayor Thomson stated "no." Mayor Thomson said "I think you know my feelings; my feelings are the same as yours." The City Council has had it entirely too long; it shouldn't have taken half of the time that it has. The mayor is pushing the council to pass it as is and send it back to the commission for public hearing, approval and publishing. The mayor expressed that if there is any changes to be made, they will be made after the fact because it is getting to the point that it has been out there almost four (4) years, talking about the time that it took the commission to put it together and the time that the Council has had it. The City Council is not even through the definitions yet. Mayor Thomson stated that he will



defend the City Council in one aspect and that is most of the time that the City Council were trying to review it the city was tied up with the water project and Knife River and it was taking two to three hours every meeting. Since the water project has been wrapped up the ordinance is sitting back there simmering. Mayor Thomson feels that it is time just to pass it. Mayor Thomson expressed that he personally feels that all the commission members have taken plenty of time to put it together and legal was looking at it over their shoulder while they were putting it together, all the council doing is playing semantics and it is nonsense. Mayor Thomson feels that it is time to get the ordinance on the street and if the city has problems with it, then we will go in and fix it a piece at a time. Mayor Thomson informed the commission that he is trying to get the council to approve it and quit trying to review it. Neil Anderson, Commission Chair commented that he personally feels that his job serving on the commission has been a waste of time, the commission put two (2) years putting it together and it looks like nobody believes that the commission is capable of anything. Mayor Thomson shared that when he sat on the Planning & Zoning Commission, with Les Bocek, Chair at that particular time, a lot of the decisions that they would send to the council were changed and the Council would do whatever they pleased. Mayor Thomson pointed out that since he has been the mayor, president of the council acting as mayor, there has been nothing that has come from his Planning & Zoning Commission that didn't pass exactly as it came because he will not allow discussion, it is what I have you hear for you are making it tough on this vote (Beckstead variance) because the last time it was four (4) to one (1) or three (3) to one (1) and he pushed it through and they approved it and that is the way it goes so now the commission is two (2) to two (2) with a chair carry it is going to be the same thing. Mayor Thomson stated that he doesn't believe in going back and rehashing what he has a committee to do and it follows along with his philosophy on the ordinance as well there is no reason to rehash what the commission has spent two (2) years with legal and all the time putting together. If we need to change it we will change it. Let's don't change it before we get it published because it is going to be outdated before it is out on the street. Mayor Thomson stated that he totally agrees but as to when the council is going to get their review of the ordinance done he can't tell the commission that. He doesn't get to push it through, he just gets to ask his council to vote it through and as you well know he is short a person to (meaning City Council) which will hopefully be resolved next month when things can get back to a full council and get some business done. Mayor Thomson informed the commission that the city is in the middle of a lawsuit with Knife River, will come to fruition the first of the year to start doing depositions and things like that nature, lots of stuff going on.

### **Adjournment**

Motion was made by Vicky Lyon, Commission Member and seconded by Curtis Waisath, Commission Member to adjourn. All voted aye, unanimous. Meeting adjourned at 7:03 p.m.

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Neil Anderson, Commission Chair

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Canda L. Dimick, City Clerk