

Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, February 14, 2012 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Vice Chair Laura Christman called the meeting to order at 6:35 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Vice Chair Laura Christman, Commissioner Joe Poche, Commissioner Jim Rubin, Commissioner Peter Savoie and Commissioner Steve Szymanski.

Present at the meeting were the following staff members: Robert Zuccaro, Community Development Director; David Foster, Deputy City Attorney; and Emily Kropf, Community Development Clerk.

Absent were Chairman Ira Plotkin and Commissioner Ann Kerr.

APPROVAL OF MINUTES

Commissioner Savoie made a motion, which was seconded by Commissioner Szymanski, to accept the January 24, 2012 minutes as written. The motion passed unanimously.

AGENDA ITEMS

Proposed Ordinance Amendment to Municipal Code Section 16-14-20 Concerning Non-Conforming Lot Area Development Regulations

Mr. Zuccaro stated that staff is presenting for recommendation to City Council two options for amending the non-conforming lot area development regulations. During City Council's recent review of the Bulk Plane and Floor Area Ratio (FAR) regulations, several residents from the Southmoor Vista subdivision requested that the City consider eliminating the non-conforming restrictions for Southmoor Vista.

Mr. Zuccaro defined a non-conforming lot as a property that does not meet the minimum lot area requirements for the zone district and is therefore subject to development restrictions. Staff estimates that there are approximately 18 non-conforming lots within Southmoor Vista. These lots are less than a ½-acre and are limited to 3,000 square feet of development, which includes garages, walk-out basements and any part of the primary structure.

Mr. Zuccaro continued that the Southmoor Vista residents asked that the City consider eliminating the non-conforming restrictions if the Bulk Plane and FAR regulations, which limit development based on the net lot area, were adopted. City Council requested that the Southmoor Vista residents work with the Home Owners' Association (HOA) to determine if the neighborhood supported the request. The HOA Board of Directors held an input meeting and voted to recommend that the non-conforming restrictions be removed from Southmoor Vista.

Mr. Zuccaro stated that staff presented the HOA Board's recommendation to City Council in order to receive direction prior to drafting the proposed amendment. During discussion it was suggested that the elimination of the non-conforming restrictions should not be

applied only to Southmoor Vista but to the entire zone district. The elimination of the non-conforming restrictions would then apply to the 18 non-conforming lots in Southmoor Vista and to two additional non-conforming lots in the Cherry Hills East subdivision. To the best of staff's knowledge, these are the only other non-conforming lots in R-4. Mr. Zuccaro added that staff estimates that there are three non-conforming lots in R-3 and 20 non-conforming lots in R-1.

Mr. Zuccaro continued that staff has drafted two options for eliminating the non-conforming restrictions. Option A exempts non-conforming lots in R-4, while Option B eliminates the non-conforming restrictions in all zone districts. Council expressed support for eliminating the regulations in the R-4 zone district and for further consideration of eliminating the regulations City-wide. Staff has attempted to contact several individuals from Cherry Hills East for the past two weeks to discuss the proposed change but has not received a response.

Mr. Zuccaro said that Table 1 of the staff memo includes a comparison of the allowed area under current restrictions for non-conforming lots and the allowed area under the FAR. The additional area allowed by the FAR includes accessory structures and varies from 1,515 to 1,821 square feet in R-4. The additional area in R-3 ranges from 2,388 to 3,010 square feet. The additional area ranges from 1,244 to 9,310 square feet in R-1 due to the wide range of non-conforming lot sizes in the zone district. Mr. Zuccaro added that the additional area will also be subject to the Bulk Plane, which will limit the height of any structures.

Commissioner Rubin asked if the setbacks would change if the proposed amendment was adopted.

Mr. Zuccaro responded no.

Commissioner Rubin stated that it seems as though only the size of the house would change.

Mr. Zuccaro responded yes.

Commissioner Rubin asked if the non-conforming restrictions are more limiting than the area allowed by the FAR.

Mr. Zuccaro responded yes. He added that all non-conforming lots that are less than a 1/2-acre are limited to 3,000 square feet of development, but there is no lot coverage restriction in the current regulations. Larger non-conforming lots are subject to a square footage restriction and a 10% lot coverage limitation.

Commissioner Rubin asked if the 3,000 square feet of development restriction would still apply to any non-conforming lots in R-4.

Mr. Zuccaro responded no. He added that this restriction would not apply in either option presented by staff.

Vice Chair Christman stated that she believes that there are three HOA's in R-4.

Mr. Zuccaro responded that he does not believe that there are any non-conforming lots located in the Cherry Hills North neighborhood or in the neighborhood located near Summit Boulevard.

Vice Chair Christman stated that she is uncomfortable recommending the proposed amendment for all of R-4 without the approval of Cherry Hills East. She added that

otherwise she thinks it makes sense to eliminate the non-conforming restrictions for the entire zone district.

Commissioner Rubin stated that he believes that the amendment should be adopted City-wide.

Commissioner Poche stated that he agrees. He continued that the Bulk Plane and FAR were adopted in order to limit development and that eliminating the non-conforming restrictions City-wide creates a uniform policy.

Vice Chair Christman asked what Commission Szymanski and Commissioner Savoie think of adopting the proposed amendment outside of R-4 as they were both involved with the Residential Development Standards Committee (RDSC).

Commissioner Savoie asked what the definition of net lot area is.

Mr. Zuccaro responded that it is the area within the lot boundaries. Gross lot area is measured to the centerline of adjacent streets.

Commissioner Savoie stated that the proposed amendment limits development using the FAR, which is applied to the net lot area.

Mr. Zuccaro responded yes.

Commissioner Savoie said that the non-conforming lots in R-1 are very small, and the homeowners in this area are not petitioning to eliminate the non-conforming restrictions. He continued that while the Bulk Plane and FAR limit development, it is worrisome to remove the non-conforming restrictions from the lots in R-1, which has the second highest number of non-conforming lots. The issue of Southmoor Vista is understandable as it was zoned by the county in the 1960's and later annexed into the City resulting in a conflict between county and City zoning. Commissioner Savoie added that he is uncomfortable eliminating the non-conforming restrictions City-wide and that Southmoor Vista has a specific problem that needs to be resolved.

Vice Chair Christman stated she believes that the neighbors of the non-conforming lots located on E. Quincy Avenue in R-1 would not be happy if the homes on these lots were allowed to be built any larger.

Commissioner Savoie asked if Vice Chair Christman meant the lots located on the east side of the City.

Vice Chair Christman said yes.

Commissioner Savoie stated that he agrees.

Commissioner Poche responded that it would be impossible to build a home on these lots that would meet the FAR requirement.

Mr. Zuccaro said that these lots would probably require a setback variance as there is no building envelope as a result of the R-1 setbacks.

Vice Chair Christman stated that if the proposed amendment was adopted it would be almost impossible to build on these lots. She added that it would almost be better for these lots to be subject to the non-conforming restrictions instead.

Commissioner Savoie said that these lots would at least be allowed 3,000 square feet of development.

Mr. Zuccaro responded that an approved setback variance from the Board of Adjustment and Appeals (BOAA) would still be required under the current regulations.

Commissioner Poche stated that these lots already have homes on them that are built to the maximum allowed area.

Commissioner Savoie said that they are small homes.

Vice Chair Christman stated that she is not comfortable impacting the non-conforming lots outside of R-4 without input from homeowners especially if the proposed amendment will make it harder to build on these lots.

Commissioner Szymanski asked how eliminating the non-conforming restrictions would affect the lots located on E. Quincy Avenue.

Mr. Zuccaro responded that there are houses on two of the three lots. The current regulations state that in order to develop on a vacant non-conforming lot, approval from the BOAA is required.

Commissioner Savoie asked if this is true no matter what.

Mr. Zuccaro responded yes. The BOAA must approve the proposed development in order to build on a vacant non-conforming lot. If there is an existing house on a non-conforming lot and there is a proposed redevelopment, administrative approval can be granted instead.

Commissioner Savoie stated that in order to be granted approval, development cannot exceed 3,000 square feet and all setbacks must be met, which would result in a 10'x10' building envelope.

Mr. Zuccaro responded yes. He added that the recently remodeled home on one of the non-conforming lots on E. Quincy Avenue had no building envelope at all. A new variance was not required because only the interior of the home was remodeled. Recently there were two houses built on non-conforming lots on E. Oxford Lane and one was approved by the BOAA.

Commissioner Szymanski said that these were two successful examples of smaller homes.

Mr. Zuccaro stated that one of the homes received a setback variance from the BOAA. The other lot received administrative approval because it had been previously developed. The maximum allowed area on this lot was approximately 7,000 square feet.

Commissioner Savoie asked if there were setback negotiations.

Mr. Zuccaro responded no because the house met the R-1 setbacks.

Commissioner Szymanski asked if the proposed amendment was adopted City-wide, who would be burdened that currently has a vacant non-conforming lot.

Mr. Zuccaro responded that the burden is meeting the setbacks for the zone district. If the setbacks cannot be met then a setback variance is required. Mr. Zuccaro added that most of the non-conforming lots have been developed.

Commissioner Poche asked if the Bulk Plane and FAR regulations were meant to protect all residents from larger development.

Commissioner Szymanski responded yes. He continued that the intent of the Bulk Plane and FAR regulations was to create a fair policy that could be easily interpreted and applied to all properties based on net lot area.

Commissioner Rubin stated that the small lots will require a setback variance regardless.

Commissioner Savoie said that the additional development of homes allowed on small non-conforming lots could be out of character with the neighborhood. Commissioner Savoie added that while he understands the issue with Southmoor Vista, he believes that the law of unintended consequences could kick in if the non-conforming restrictions were eliminated in other zone districts.

Vice Chair Christman stated that she has been told that an individual who was subdividing around the non-conforming lots on E. Quincy Avenue was unable to acquire the properties and would be unhappy to learn that the houses on those lots could be bigger than they currently are.

Commissioner Poche said that the R-1 setbacks would still have to be met.

Vice Chair Christman responded that the homeowner of a non-conforming lot could argue that there is no building envelope as a result of the R-1 setbacks and that building on the lot is impossible.

Commissioner Szymanski stated that the RDSC wanted to create a policy that could be applied across the board. Someone might end up with a 3,000 square foot home on a non-conforming lot next to them, but someone else might end up with a 23,000 square foot home next to their non-conforming lot.

Vice Chair Christman said that she is not comfortable creating impossible criteria for development on non-conforming lots.

Commissioner Rubin responded that the FAR of .23 in R-1 is less than the FAR of .30 in R-4. Non-conforming lots in R-1 would actually be more restricted than those in R-4.

Commissioner Savoie asked what happens when someone is unable to meet the setbacks for the zone district.

Mr. Zuccaro responded that the individual would have to go to the BOAA and would have a good case for a variance.

Commissioner Savoie asked what the outcome of such requests has been.

Mr. Zuccaro responded that one of the lots on E. Oxford Lane received a setback variance that was equivalent to the zone district that best matched the lot's size.

Commissioner Szymanski said that it was a success.

Vice Chair Christman asked if it would be possible to eliminate the non-conforming restrictions in R-4 and require that all other non-conforming lots meet the FAR for the zone district that best matches the lot's size.

Commissioner Savoie responded that it would result in additional square footage for the non-conforming lots outside of R-4.

Vice Chair Christman asked if the setbacks could be changed to meet the equivalent zone district's standards.

Deputy City Attorney Foster stated that when the BOAA hears a request for approval to develop on a non-conforming lot several important criteria have to be met. The applicant must demonstrate that the proposed development will not have an adverse effect on the surrounding properties. The applicant will also have to demonstrate a hardship in addition to notifying neighbors of the proposed development. The BOAA will not automatically grant the maximum square footage allowed.

Vice Chair Christman said that she would like to clarify that it is not an unintended consequence that certain non-conforming lots will become absolutely unbuildable. It is intended that an individual who wishes to develop on an unbuildable lot will have to go to the BOAA.

Commissioner Savoie responded that the lots are currently unbuildable and the setbacks will not change.

Vice Chair Christman said that it is possible to build a 3,000 square foot home on some non-conforming lots and meet the required setbacks. On some non-conforming lots that are only short 10% of the required minimum lot area, a home can be built to meet the setbacks for the zone district.

Commissioner Savoie stated that several of the non-conforming lots are short 50% of the required minimum lot area.

Commissioner Szymanski said that he would have a problem with eliminating the non-conforming structures in R-1 if the setbacks did not have to be addressed but they do regardless. He added that there has not been an issue with the Bulk Plane or FAR regulations since their adoption.

Vice Chair Christman replied that she does not have a problem eliminating the non-conforming restrictions City-wide as long as developing on a non-conforming lot does not become impossible.

Commissioner Savoie responded that the proposed amendment would make development on a non-conforming lot more liberal. An applicant would also have greater leverage with the BOAA to build additional square footage that was not allowed previously.

Vice Chair Christman stated that the neighbors of non-conforming lots will not like the additional development.

Commissioner Poche said that there might be a handful of cases in which there is a problem, and those individuals will have to go to the BOAA, which seeks to protect the character and nature of the Village.

Commissioner Savoie asked if anyone has come forward to develop on any of the non-conforming lots.

Mr. Zuccaro responded that there were the two on E. Oxford Lane.

Commissioner Szymanski stated that both received approval from the BOAA, and the outcome was both successful and obtainable.

Commissioner Szymanski asked if the Commission recommended Option A, could an individual in another zone district could claim that it was unfair treatment.

Deputy City Attorney Foster responded that he is comfortable eliminating the non-conforming restrictions on a district-wide or City-wide basis.

Vice Chair Christman stated that she is fine with eliminating the non-conforming restrictions City-wide as long as it is clear that some lots may become unbuildable.

Commissioner Savoie responded that they were unbuildable prior to the proposed amendment.

Mr. Zuccaro responded that eliminating the non-conforming restrictions will not change anyone's building envelope.

Vice Chair Christman said that she would entertain a motion.

Commissioner Rubin made a motion to recommend to City Council approval of the proposed amendment eliminating the non-conforming lot review and development requirements for all zone districts.

Commissioner Szymanski seconded the motion, which was unanimously approved.

Proposed Ordinance Amendments to Municipal Code Sections 16-16-180 and 16-16-190 Establishing Administrative Variance Criteria for Bulk Plane and Floor Area Ratio Zoning Requirements

Mr. Zuccaro stated that staff is presenting for recommendation to City Council proposed zoning amendments establishing administrative variance procedures for the City's Bulk Plane and FAR requirements. Mr. Zuccaro said that during City Council's recent review of the Bulk Plane and FAR regulations, City Council directed staff to develop either alternative variance criteria for the Bulk Plane and FAR or adjust the City's current variance criteria to create more leniency.

Mr. Zuccaro continued that staff recently had a study session with City Council, who expressed support for creating administrative variance procedures specific to the Bulk Plane and FAR requirements. Council did not want to loosen the variance procedures altogether and felt that staff should be able to make certain decisions in regards to such variances. The proposed administrative procedure would allow staff to approve up to a 10% variance to the maximum Bulk Plane angle for up to 200 square feet of additional floor area or building coverage and allow up to a 1% variance above the floor area allowed by the FAR. Mr. Zuccaro added that if an applicant sought a greater variance than what the proposed administrative variance procedure would allow, he could still request variance approval from the BOAA.

Vice Chair Christman asked if the 1% variance above the floor area allowed by the FAR would be in addition to the 10% variance to the maximum Bulk Plane angle.

Mr. Zuccaro replied that the 1% variance above the FAR would be separate from the 10% variance to the Bulk Plane.

Commissioner Rubin asked if the variance would only apply to existing homes.

Mr. Zuccaro responded that the administrative variance would apply to both existing and newly constructed homes, as well as additions. For the 1% variance above the FAR, a home in R-3 that is exactly 1-acre could receive up to 108 square feet. In R-2, a home that

is exactly 2 ½-acres could receive up to 250 square feet. The additional square footage varies according to net lot acreage. The criteria for the administrative variance are based on the current variance criteria. The applicant must show unique circumstances or conditions on the lot and that the variance would not cause an undesirable change to the character of the neighborhood. The applicant must also demonstrate that the variance is the minimum necessary to make reasonable use of the property. If the applicant can meet the review criteria then staff can administrate the approved variance.

Commissioner Szymanski stated that the 1% variance above an FAR of .23 is less than ¼% of the overall FAR. He asked if City Council knows that the proposed variance is that small.

Mr. Zuccaro asked if the variance was too small.

Commissioner Szymanski responded yes. He also asked where the 10% variance to the maximum Bulk Plane angle came from.

Mr. Zuccaro responded that the City of Boulder has applied a 10% variance to the Bulk Plane to its variance procedure.

Vice Chair Christman asked if the variance was for 10° or 10%.

Mr. Zuccaro replied that it is for 10%.

Commissioner Savoie asked if the Bulk Plane angle would then be 44°.

Mr. Zuccaro responded yes.

Commissioner Szymanski stated that the unintended consequence of the 10% variance to the Bulk Plane would be that the allowable area that is 35' would be widened. He added that the additional 10% seems reasonable as it widens the area but does not exceed the 35' height limit. Commissioner Szymanski added that he does not agree with the 1% variance above the FAR, however.

Mr. Zuccaro said that staff debated whether to have a variance for the FAR because a house that is close to reaching its maximum FAR is already quite large. He added that the 10% variance to the Bulk Plane makes more sense.

Commissioner Savoie stated that the additional square footage allowed by the 1% variance above the FAR is so small that it is irrelevant.

Commissioner Rubin added that it would be difficult to meet the review criteria as a result.

Mr. Zuccaro responded that it could be relevant if an individual built a home and reached the maximum FAR but wanted to modify the home or add a bathroom or closet.

Commissioner Savoie stated that the individual should go to the BOAA for variance approval.

Vice Chair Christman said that she would like to clarify that the administrative variance cannot be applied for every year.

Commissioner Savoie responded that he would like to reserve the right to revisit the issue in the future if any homes have difficulty meeting the Bulk Plane standard.

Vice Chair Christman replied that she agrees, but she wants to make sure that the administrative variance is not routinely applied for in an effort to continually increase the angle.

Mr. Zuccaro stated that there can be a limitation for how often an individual is allowed to apply for the administrative variance.

Commissioner Savoie said that if the 10% variance to the Bulk Plane is granted, it should not be able to be applied for again.

Deputy City Attorney Foster stated that in other jurisdictions if administrative approval is granted, notice has to be posted for abutting neighbors who can then appeal the decision with the BOAA.

Commissioner Szymanski asked when an appeal would have to be filed.

Deputy City Attorney Foster replied that an appeal would have to be filed within 15 days and processed within 30 days.

Vice Chair Christman asked if it would be possible for an applicant to try to obtain letters of approval from abutting neighbors.

Commissioner Savoie asked if it would be possible to require notification for the application of the administrative variance.

Deputy City Attorney Foster responded that some cell tower issues require a posting of notification in the City code.

Mr. Zuccaro asked what type of notification would be preferred.

Commissioner Rubin responded that he thinks a notice sent by certified mail to adjacent property owners would be sufficient.

Commissioner Savoie asked if notice would be sent prior to approval or after.

Vice Chair Christman stated prior.

Mr. Zuccaro recommended that the Commission require both notice sent by certified mail and a posting of notification on the property.

Vice Chair Christman asked if this would give adjacent homeowners the right to appeal the approval of an administrative variance.

Deputy City Attorney Foster responded that if the notice was sent prior to approval and a neighbor opposed, it would be an objection rather than an appeal.

Commissioner Szymanski asked if it would be possible to remove the 1% variance above the FAR from the Commission's recommendation.

Commissioner Poche responded that it seems as though City Council was looking for a little wiggle room for the FAR in case a home slightly exceeded its limitation.

Commissioner Rubin stated that he agrees with the 10% variance to the Bulk Plane but not with the 1% variance above the FAR.

Commissioner Savoie asked if anyone has come close to exceeding the FAR.

Mr. Zuccaro responded no. He continued that there was one addition that came close but none of the new homes have. There have not been any new homes in old Cherry Hills either though.

Commissioner Savoie made a motion to recommend to City Council approval of an amendment establishing a 10% variance to the maximum Bulk Plane angle for up to 200 square feet of additional floor area with appropriate posting and notification.

Commissioner Szymanski said that he wanted to clarify that the 200 square feet is not additional floor area beyond the FAR.

Commissioner Savoie asked if the additional floor area still has to conform to the original FAR.

Mr. Zuccaro responded yes.

Commissioner Rubin seconded the motion, which was approved unanimously.

REPORTS

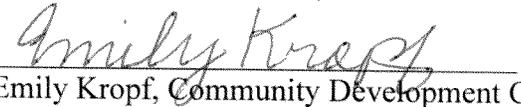
Mr. Zuccaro stated that there were no reports.

ADJOURNMENT

The meeting was adjourned at 7:47 p.m.



Laura Christman, Vice Chair



Emily Kropf, Community Development Clerk