

RECORD OF PROCEEDINGS

Minutes of the
 Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
 Held on Tuesday, October 13, 2015 at 6:30 p.m.
 At the Village Center

CALL TO ORDER

Chair Savoie called the meeting to order at 6:31 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Chair Peter Savoie, Commissioner Al Blum, Commissioner David Wyman, Commissioner Peter Niederman, Commissioner Dori Kaplan, Commissioner Mike LaMair, and Commissioner Bill Lucas.

Present at the meeting were the following staff members: Rob Zuccaro, Community Development Director; Deputy City Attorney Marcus McAskin; Assistant City Engineer Jeremy Deischer; and Emily Kropf, Special Projects Coordinator.

APPROVAL OF MINUTES

Commissioner Blum made a correction to page 2 of the September 8, 2015 minutes. He stated that the word "downstream" should be replaced with "upstream".

Commissioner Blum made a motion, which was seconded by Commissioner Wyman, to approve the September 8, 2015 minutes with this change.

The motion passed unanimously.

AGENDA ITEMS

- a. 1530 E. Oxford Lane- Request for a Floodplain Development Permit and Floodplain Map Amendment to Build a New House and Accessory Structures.

Mr. Zuccaro stated that staff is presenting a request for a floodplain development permit and floodplain map amendment. The proposal includes construction of a new house, grading, swimming pool in the floodplain. Mr. Zuccaro stated that the applicant has submitted a floodplain development study with the results of floodplain modeling and a certification letter stating the proposed development would cause no rise to the base flood elevations.

Mr. Zuccaro stated that the subject property is zoned R-1, 2.5-Acre Residential District. The parcel is irregular in shape and consists of approximately 2.7 acres. Little Dry Creek runs through the Country Club property adjacent to the subject property.

Mr. Zuccaro explained the code requirements for a Floodplain Development Permit. He stated that Municipal Code Section 16-17-60 outlines procedures and criteria for floodplain development permits.

Mr. Zuccaro explained the requirements for a Floodplain Map Amendment. He stated that Municipal Code Section 16-17-80 outlines the requirements for amendments to the floodplain boundary.

Mr. Zuccaro referred to Table 1 in the October 13, 2015 staff memorandum which lists all the Floodplain Development Permit review criteria outlined in Municipal Code 16-17-70 along with staff's findings.

Mr. Zuccaro stated that all criteria were not met. He continued to say that while the applicant does have constraints on their lot, exceptional hardship was not met as there are other viable alternatives to construct the same size or similarly sized residence without the need to encroach into the floodplain boundary. He continued to say that the western finger of the lot could also accommodate an accessory structure of similar size to those proposed to be located within the floodplain.

Mr. Zuccaro referred to Table 2 in the October 13, 2015 staff memorandum which lists the Floodplain Map Amendment review criterion outlined in Municipal Code Section 16-17-18 and staff's findings.

Mr. Zuccaro stated that the criterion was not met as adequate justification for the floodplain development permit has not been provided; therefore, justification for the map amendment is not present.

Mr. Zuccaro stated that the City has received one letter in support of the project, and copies are located on the dais.

Commissioner Blum asked how the property would be taken out of the floodplain.

Mr. Zuccaro replied that he would refer to the applicant on the technical details, but that they were regrading within the floodplain to change the floodplain map.

Commissioner Wyman asked if the buildable site which is not in the floodplain was achieved by grading.

Mr. Zuccaro replied that grading the property would create a larger buildable area.

Jeremy Deischer, assistant City Engineer, displayed a topographic map of the property and pointed out the areas of existing and proposed grading. He stated that there is no rise in elevation between the existing and proposed grading.

Commissioner Blum asked how the house is being raised out of the floodplain if not by grading.

Mr. Zuccaro replied that the ground does not always have to be raised, that more capacity can be created so that the flood elevation is reduced.

Commissioner Blum asked if the detention pond is picking up additional capacity.

Mr. Deischer replied that it is absorbing more capacity.

Commissioner Wyman asked if a French drain is also proposed.

Mr. Zuccaro replied that the building plans have not been reviewed yet, and that the architect for the applicant could answer.

Commissioner LaMair asked who owns the adjacent property with the creek.

Mr. Zuccaro replied the Cherry Hills Country Club.

Commissioner LaMair asked if there was a special setback from the waterway.
Planning and Zoning Commission Meeting

Mr. Zuccaro replied that the only setbacks are the regular zoning setbacks which are measured from the property lines.

Chair Savoie asked what the setbacks are and which property line was considered front, rear, etc.

Mr. Zuccaro replied that the west property line is the front, with a setback of 75 feet for primary structures. He continued to say that the east property line is the rear of the lot with a 50 foot setback for primary structures. He stated that the side setbacks are 50 feet for primary structures.

Commissioner Wyman asked if the property extended into the creek.

Mr. Zuccaro replied no and indicated on the site plan where the property line was.

Commissioner Lucas asked what was the white structure at the bottom of the photo.

Mr. Zuccaro replied that it is an equestrian facility.

Chair Savoie asked the City Engineer to indicate the grading changes on the site plan.

Mr. Deischer indicated both the pre-project and post-project grading on the plan.

Commissioner Niederman asked if the City has the authority to amend floodplain maps.

Mr. Zuccaro replied that the City does have review criteria for floodplain map amendments and FEMA would also have to approve. He continued to say that the City Engineer has supported the technical details as there is no rise, or impact up or down stream. He continued to say that map amendments can be made on a variety of factors, not necessarily only due to development on the site.

Commissioner Blum asked if a LOMR would be issued and would this change amend the FEMA map.

Mr. Zuccaro replied that the City Engineer has stated that a CLOMR will not be necessary and that the project would go straight to a LOMR.

Commissioner Wyman asked for clarification on CLOMR and LOMR.

Mr. Zuccaro replied that a LOMR is a letter of map revision and a CLOMR is a conditional letter of map revision.

Commissioner Blum asked how long does it take to get a LOMR and what effect would that have on a building permit.

Mr. Zuccaro replied that the LOMR would not be required in order to issue the building permit but would be required as part of the as-built certification at the end of the project.

Commissioner Niederman asked why staff is recommending denial of the application.

Mr. Zuccaro replied that while the applicants have encumbrances on their property, the code states that there must be exceptional hardship, which staff did not feel was met. He continued to say that there was buildable area on the lot outside of the floodplain.

Chair Savoie asked if there was a danger to setting a precedent.

Mr. Zuccaro replied that each case is evaluated on its own merits, and this case would not set any type of precedent. He continued to say that 7 years prior, a permit was denied to realign a stream on Random Road, as it was not found to meet the hardship criteria.

Commissioner Niederman asked if it was possible to site the house outside of the floodplain.

Mr. Zuccaro replied that the area of property which is outside of the floodplain and outside of setbacks was about 12,600 square feet and big enough for a house typically seen in the R-1 Zone district.

Chair Savoie asked if accessory structures are allowed in the floodplain.

Mr. Zuccaro replied that any development within the floodplain requires a floodplain development permit. He continued to say that no development is allowed in the floodplain without a permit.

Chair Savoie asked if a portion of the currently proposed house is in the floodplain.

Mr. Zuccaro replied yes.

Commissioner LaMair asked if the riparian habitat had been evaluated.

Mr. Zuccaro replied that that type of evaluation was not required by the City permitting process, but they are required to show proof of any required Army Corps of Engineers 404 Permits, which they have provided.

Melissa Mabe, Mickey Florio, and Jay Peters introduced themselves as representatives of the applicant.

Mr. Peters, engineer for the applicant, stated that they had worked with the U.S. Department of Fish and Wildlife and there was no impact or threat to any forms of wildlife. He continued to say that there area is Kentucky Bluegrass and vegetation and that it is not a riparian habitat.

Mr. Florio stated that as the area is in the 100 year floodplain it is not seasonally wet and would not be able to support a riparian habitat.

Ms. Mabe stated that the exceptional hardship on the lot stems from the buildable area which is only 11%, as opposed to 45% buildable area that a typical lot in R-1 would have. She continued to say that the staff recommendation of putting the accessory structure on the finger of the lot would not be a safe location, as the homeowners would have to cross the street in order to have use of the accessory structure.

Commissioner Kaplan asked if the homeowners were aware of the floodplain when they purchased the property.

Ms. Mabe replied no.

Commissioner Wyman asked for more information on the detention pond.

Mr. Peters replied that the current detention pond is approximately 2 ½ feet deep now, and the proposed changes will make it 3 ½ feet deep. He continued to say that the current surface area is 1200 square feet and the proposed surface area is 1400 square feet.

Commissioner Wyman asked what would be done to avoid siltation and clogging of the pond.

Mr. Peters replied that there was a maintenance program in place.

Mr. Zuccaro stated that a drainage maintenance agreement was signed and recorded for all new homes in the City and the drainage facilities were inspected annually.

Commissioner Niederman asked what kind of landscaping materials would be used in the pond.

Mr. Peters replied native vegetation and grasses.

Commissioner Niederman stated that the cross section drawings appear to show more of a bowl effect on the proposed plan as opposed to a gentle slope that is existing.

Mr. Peters replied that the proposed cross section gives the illusion of a more bowl-like effect.

Ms. Mabe stated that the only portion of the house in the floodplain are posts which hold the deck and stairs.

Commissioner Wyman asked if hydraulic pressure was considered as it can increase the chance of the piers heaving.

Mr. Peters replied that the helical piers will be embedded in the bedrock and will alleviate the heaving forces.

Commissioner Wyman asked what the date of the groundwater sample was.

Mr. Peters said he did not recall the date.

Commissioner Blum asked if there was a basement.

Ms. Mabe replied no.

Commissioner Blum asked what the foundation system was.

Mr. Florio stated that the foundation of the house was located one foot above the floodplain, which is the same as the current house. He continued to say that the foundation consisted of helical piers on a structural slab.

Commissioner Blum asked if a swing set could be in the floodplain.

Mr. Zuccaro replied that playground equipment is not regulated as accessory structures with the exception of playhouses.

Commissioner Niederman asked for a definition of hardship versus exceptional hardship.

Mr. Zuccaro replied that the Board of Adjustment and Appeals has some general criteria to define a hardship, such as comparing the property in question to other lots in the same zone district. He continued to say that other than this, there is no specific definition of hardship or exceptional hardship.

Commissioner LaMair asked if a detention pond could be in the floodplain.

Mr. Zuccaro replied that a detention pond is allowed in the floodplain, but will still require a floodplain permit.

Commissioner Blum asked for clarification on the proposed footprint.
Planning and Zoning Commission Meeting

Mr. Florio indicated the existing and proposed footprint. He stated that they are trying to preserve several mature trees on the property.

Mr. Blum stated they could still build the same sized home outside of the floodplain but would have to push the pool out.

Ms. Mabe stated that the adjacent neighbors are afforded accessory structures and pushing the pool out would not be fair for her clients.

Commissioner LaMair stated that all lots are not equal and that the responsibility of the Commission is not to make them equal as it would be never ending.

Commissioner Niederman asked when the representatives were engaged by the clients.

Mr. Florio replied that they were aware of the floodplain and the irregular shape of the lot, but they were under the impression it would qualify them for an exceptional hardship. He continued to say that they were never given the impression that their application would be denied.

Commissioner Niederman asked what the process staff went through to recommend denial was. Mr. Zuccaro replied that staff had conversations and meetings with the applicants prior to their submittal, but did not make any recommendation until the end of the review. He continued to say that staff interprets the code as it relates to City policy, and the definition of an extreme hardship is something that is open to interpretation, as there is not a definition in the code.

Chair Savoie stated that no members of the public were present for the public hearing.

Chair Savoie made a motion, which was seconded by Commissioner Wyman, to recommend denial of the proposed Floodplain Development Permit and floodplain map amendment for 1530 E. Oxford Lane based on the findings in Tables 1 and 2 of the October 13, 2015 staff memorandum.

Mr. Florio asked if conditional approval could be granted based on moving certain elements out of the floodplain.

Deputy City Attorney McAskin stated that he advised that any amendments to the application be brought back to the Planning Commission.

Chair Savoie asked the applicant if they would like the Commission to vote on the application.

Mr. Florio indicated that they did not want a vote.

Chair Savoie made a motion, which was seconded by Commissioner LaMair, to withdraw his previous motion.

The motion passed unanimously.

Commissioner Blum stated that the Commission would like to table the discussion pending the applicant meeting with staff to discuss alternatives.

Deputy City Attorney McAskin stated that there was no need to make a motion to table.

b. Review of Overall Permitted Building Height

Ms. Kropf stated that staff is presenting for discussion a review of the current permitted building height. She continued to say that in 2014, City Council established the Bulk Plane and Floor Area Ratio Study Committee. The Committee was asked to determine whether the development standards that were adopted in 2011 addressed the trend of looming, massive new homes in traditional neighborhoods that negatively impact character and privacy. The development standards consist of Bulk Plane and Floor Area Ratio regulations and an increase in the overall permitted height from 30 to 35 feet in all zone districts except R-5.

Ms. Kropf stated that since adoption of the development standards, the City has received complaints regarding the height of new construction. The concern is that the increase in height negatively impacts views and creates a looming effect on neighboring properties. She continued to say that while the majority of homes in R-1, R-2 and R-3 have taken advantage of the increase in height, only a few have maximized the 35-foot allowance.

Ms. Kropf stated that the Committee's final report was presented to Council in August 2015, and that the Committee found that the permitted building height was not a consistent issue and should remain at 35 feet.

Ms. Kropf stated that Council asked staff to bring the issue before the Commission to receive direction as to whether the City should revert back to the original 30-foot height limit or continue to allow the increase in height of 35 feet. She continued to say that an additional option may be to allow by right a height of 30 feet but establish a special review process to request a permitted height of up to 35 feet. Ms. Kropf stated that Exhibit F of staff's memo includes an example of a process with specific review criteria.

Chair Savoie stated that he was on the RDSC committee, and that there was a division of opinion on the 35 foot height limit.

Commissioner LaMair asked who was on the review committee.

Mr. Zuccaro replied that the review committee was made up of members of the RDSC and Planning and Zoning Commission, as well as two members of City Council. He continued to say that the height evaluation was not in the original scope of work for the review committee, but City Council wanted it added.

Chair Savoie asked if there was a list of homes so the commissioners could drive by and view the homes in person.

Ms. Kropf replied that a list was in the packets.

Commissioner LaMair asked what kinds of complaints have been received.

Mr. Zuccaro replied that usual complaints have to do with the character of the neighborhood, large homes having a looming effect, and design issues.

Chair Savoie stated that he would like the commissioners to have time to look at some of the homes on the list and discuss at the next meeting.

Commissioner Niederman asked is the height limit currently 35 feet.

Mr. Zuccaro replied yes.

Commissioner Niederman asked why is this being studied.

Mr. Zuccaro replied that City Council requested additional review.

Commissioner Wyman asked for specific addresses that complaints have been received.

Mr. Zuccaro replied the two new homes under construction on High Street have received the majority of complaints.

Chair Savoie asked if the Commission could be sent those addresses.

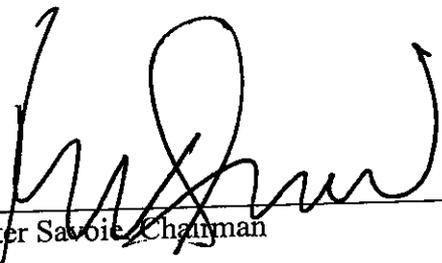
Mr. Zuccaro replied yes.

ADJOURNMENT

Chair Savoie made a motion, which was seconded by Commissioner Niederman, to adjourn the meeting.

The motion passed unanimously.

The meeting was adjourned at 8:20 p.m.


Peter Savoie, Chairman


Cesarina Dancy, Community Development Clerk