

Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, January 12, 2016 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Community Development Director Rob Zuccaro stated that in the absence of Chair Savoie, an interim chair would need to be appointed for the meeting.

Commissioner Lucas made a motion, which was seconded by Commissioner LaMair, to nominate Commissioner Blum as the interim chair.

The motion passed unanimously.

Interim Chair Blum called the meeting to order at 6:30 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Interim Chair 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; Troy Carmann, City Engineer; and Cesarina Dancy, Community Development Clerk.

APPROVAL OF MINUTES

Commissioner Niederman made a motion, which was seconded by Commissioner Wyman, to approve the November 10, 2015 minutes as written.

The motion passed unanimously.

AGENDA ITEMS

a. 1530 E. Oxford Lane Floodplain Development Permit

Mr. Zuccaro stated that Staff is presenting for review a Floodplain Development Permit pursuant to Article XVII of the Zoning Ordinance to allow site grading, a detention pond and construction of a swimming pool and pool decking within the Special Flood Hazard Area (SFHA). He stated that this is a revised application and that the applicant had previously submitted in October 2015. He continued to say that a new home is also proposed on the property outside of the SFHA. Mr. Zuccaro stated that the applicant has submitted a floodplain development study and a letter from their engineer certifying that the proposed development would cause no rise to the base flood elevations.

Mr. Zuccaro displayed a vicinity map of the property and indicated the special flood hazard area. He stated that the lot is located in the R-1 Zone District, is 2.7 acres and is irregularly shaped.

Mr. Zuccaro stated that the current proposal is for a detention pond, swimming pool, and pool decking in the floodplain.

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Mr. Zuccaro displayed a revised map provided by the applicant which indicated the new location of the main residence out of the floodplain and the location of the proposed structures. He stated that the applicant has provided revised engineering studies and no rise certifications which were approved by the City Engineer.

Mr. Zuccaro stated that Staff has made recommended findings based on the Floodplain Development Permit Review Criteria found in Table 1 of the Staff Memorandum. He continued to say that the review criteria are outlined in Section 16-17-70 of the Municipal Code.

Mr. Zuccaro stated that staff finds that several criteria were not met. He continued to say that there are alternative locations for the accessory structure outside of the SFHA, that good and sufficient cause does not exist, exceptional hardship was not found, and that the Master Plan of the City discourages new structures and improvements within a floodplain.

Mr. Zuccaro displayed Figure 2 of the Staff Memorandum and indicated the approximate primary building and accessory structure envelopes as well as a potential accessory structure location which is located out of the SFHA.

Commissioner Wyman asked if Humboldt is a public street.

Mr. Zuccaro replied that he is not certain of the status of Humboldt.

Commissioner Niederman asked if the house was located outside of the floodplain.

Mr. Zuccaro replied that the house was located out of the floodplain.

Mr. Zuccaro stated that the applicant is no longer proposing an amendment to the floodplain map. He continued to say that the current application is only for the pool, pool decking, grading and detention pond to be located in the floodplain.

Interim Chair Blum asked for clarification on the various lines on the floodplain map.

Troy Carmann, City Engineer, stated that the broken blue line is the effective 100 year floodplain. He continued to say that this is FEMA's representation of the 100 year floodplain boundary. He stated that FEMA and other local partners have studied and designated this area as the regulatory boundary. He stated that the solid light blue line is the pre-project/corrected 100 year floodplain which is the result of topography and hydraulic changes. He stated that this is a data point within the floodplain permit process and is used as informational for engineers to make recommendations based on the changes since the regulatory floodplain was drawn.

Interim Chair Blum asked if a LOMR would be necessary.

Mr. Carmann replied that FEMA does not have a process for map revisions due to natural changes over time and a LOMR would not be required. He continued to say that there are many variables which can cause the boundary line to change.

Interim Chair Blum asked if approved, would the no rise to base elevations apply.

Mr. Carmann replied that the no rise regulations ensure that nothing in the floodplain will impact other property. He continued to say that confirmation of no rise certification is in the City's code and the applicant's engineer has provided the certification.

Commissioner Niederman asked if there are no map revisions, what are the FEMA requirements regarding accessory structures in the floodplain.

Mr. Carmann replied that all regulations are in Chapter 16 of the City's code. He continued to say that one of the criteria is if the proposed structure is reasonably safe from flooding. Mr. Carmann continued to say that the pool mechanical features will be placed out of the floodplain.

Commissioner Niederman asked why no map amendment is required.

Mr. Carmann replied that the map revision that would be required would make an inconsequential change to the floodplain. He continued to say that the only property affected is the applicant's and that no other properties would be affected.

Interim Chair Blum asked if a LOMR was completed could the pool be brought out of the floodplain.

Mr. Carmann replied that yes there is a process by which the pool could be raised and the floodplain could be minimized, but that the same criteria would need to be met and the process would be the same as what is currently proposed, as it is still development within the floodplain.

Commissioner Kaplan asked if the proposal meets the requirements of the insurance program and the no rise criteria.

Mr. Carmann replied yes.

Commissioner Wyman stated that the piping to the pool would still be in the floodplain even though the mechanical equipment would not be.

Mr. Carmann replied that there would still be the physical connection to the pool located in the floodplain.

Interim Chair Blum asked if there was any concern of pool chemicals being discharged in case of a flood.

Mr. Carmann replied that the water from the pool would likely be very diluted and could be considered a reasonably safe pollutant.

Commissioner Wyman asked if there was any issue with a detention pond in the floodplain.

Mr. Carmann replied no.

Interim Chair Blum asked if the detention pond was part of the application.

Mr. Zuccaro replied that all improvements are part of the application, including the detention pond and grading.

Commissioner Kaplan asked when the applicant would start work once the permit was granted.

Mr. Zuccaro replied that he would defer to the applicant.

David Foster, attorney for the applicant, stated that he was hired by the property owners after the last meeting of the Planning and Zoning Commission. He continued to say that he was joined this evening by the applicant, the architectural firm that designed the home and accessory structure, and the engineer.

Mr. Foster stated that after the previous application was denied, the application was significantly revised as the house has been reduced in size in order to be out of the floodplain, while still meeting the setback, bulk plane and FAR requirements.

Mr. Foster stated that the location of the pool is important to the applicant, as it is the only logical location.

Mr. Foster stated that much discussion was given to the idea of exceptional hardship. He continued to say that the applicants meet the exceptional hardship criteria found in the Municipal Code used in variance determinations. He continued to say that variance determinations related to exceptional hardships only require one of three criteria to be met, and he feels that the applicant meets two of the three. He stated that they have a very unusual property boundary and the existence of the floodplain makes it a difficult parcel to develop.

Commissioner Kaplan asked what was the code section referred to.

Mr. Foster replied Section 16-3-50.

Commissioner Kaplan stated that the definition of hardship includes "excessive and unnecessary hardship".

Mr. Foster stated that the property boundary is very unusual, as the driveway divides the property, and is shared with another property. He continued to say that placing the pool on the "finger" portion of the lot is the least attractive location, and poses a safety threat as the driveway that would need to be crossed is shared with other properties. He stated that all other alternate locations would pose problems with the adjoining neighbors, as it would be immediately adjacent to the golf course or essentially in the backyards of the adjacent neighbors.

Mr. Foster stated that the location identified by the architect is the only logical place to put the pool and that if there had been any other location for the pool that would have made sense it would have been identified.

Commissioner Lucas asked if there was a possibility to vacate Oxford Lane and turn the finger portion of the property into the driveway.

Mr. Foster replied that he was unsure if a new driveway would make sense and that would require approval by the neighbors with whom the driveway is currently shared.

Mr. Foster stated that Mr. Carmann had stated that the pool would make no impact on the floodplain. He continued to say that there was no other structure better suited to be in the floodplain than a pool or detention pond. He stated that a pool which does not flood is suited to be placed within the floodplain.

Mr. Foster stated that the applicant has met criterion (c) which states that the authorization will not result in any threats to public safety, public expenses, or create any nuisances.

Interim Chair Blum asked about the criterion not met regarding the Master Plan.

Mr. Foster replied that the criterion regarding the Master Plan was met in the previous submittal by the applicant. He continued to say that the language was very circular, as the criterion stated that improvements are discouraged unless found to be in compliance with the Village's floodplain regulations. He stated that seeking the permit was part of being compliant with the floodplain regulations.

Commissioner LaMair asked if there were any examples of exceptional hardship provided by case law.

Mr. Foster replied that the determination is subjective and given to the Commission to make. He continued to say that he could find examples of case law, but that the code gives direction in determining hardship.

Commissioner Niederman asked at what point in purchasing the property was the applicant aware of the issues and what was disclosed in the process of due diligence.

Mr. Foster stated that he was not counsel for the applicant at that time. He continued to say that it was not an important issue as there is a certain expectation in the City to be able to build a residence in the R-1 Zone District that was 8,000, 10,000 or 12,000 square feet on a lot that is 2.7 acres. He continued to say that anyone who would want to develop on this property would need to be afforded some degree of relief.

Commissioner LaMair stated that Mr. Foster asked what would be better in the floodplain than a pool. He continued to say that nothing at all in the floodplain would be better than any structure. He continued to say that building in the floodplain is discouraged as it is a public safety issue.

Mr. Foster replied that some jurisdictions do not allow any development at all in the floodplain. He continued to say that the City has a process for development to allow reasonable development.

Commissioner Niederman asked if there were any concerns of neighbors for any liability.

Mr. Zuccaro replied that all public hearing notice requirements were met and the City did not receive any comments from neighbors.

Interim Chair Blum asked if the applicant wanted to speak.

Mr. Foster replied no.

Steve Elken, of 5 South Lane, stated that he has known the applicant for years and that he recommends approval of the proposal within the regulations. He stated that new homes are an investment in the City and that the pool is a reasonable request. He stated that there would be no liability and no debris from the pool.

Commissioner Lucas thanked the applicant and stated that Mr. Foster's memo was very clear and made good points. He stated that he had walked the site and that it is a very unique property. He continued to say that the topography on the lot drops off significantly and the proposed pool location is a very natural location. He continued to say that it appears that the neighbors are not in opposition to the proposal. He stated that it was a thoughtful application and he was in support of the application.

Commissioner Lucas stated that the applicant may want to consider vacating the road to provide more flexibility.

Commissioner Kaplan stated that she did not walk the property but she drove by and it is a very verdant and pristine site.

Interim Chair Blum asked if the driveway was moved and the pool was moved what the setbacks would be.

Mr. Zuccaro replied that the setbacks from the front property line are 75 feet for both primary and accessory structures.

Commissioner LaMair stated that the exceptional hardship was difficult to define. He continued to say that there were alternative locations but they were not ideal. He asked if the City Attorney had any cases or language to further explain exceptional hardship.

Deputy City Attorney McAskin replied that there is not a definition in the code of exceptional hardship.

Commissioner Lucas stated that Staff has a responsibility to provide the alternatives listed in the memo.

Commissioner Wyman stated that if the application was approved it could set a precedent. Interim Chair Blum asked if the application would move forward to City Council.

Mr. Zuccaro replied that if it was approved it would move to City Council, and if it was denied the applicant could choose if they would still like to move it forward to City Council.

Commissioner LaMair asked if there were any similar applications in the past and what the outcome was.

Mr. Zuccaro replied that there were not many floodplain development applications in recent years, and there were none with this same situation. He continued to say that each case has unique circumstances and stands alone.

Interim Chair Blum asked if a LOMR was provided would staff recommend the application.

Mr. Zuccaro replied that map revision was proposed in the application submitted in October and that application was denied based on the exceptional hardship criteria.

EXECUTIVE SESSION

Commissioner Lucas made a motion, which was seconded by Commissioner LaMair, to move into executive session with the City Attorney for legal advice related to the review criteria per C.R.S. 24-6-402(4)(b).

The motion passed unanimously.

OPEN MEETING

Commissioner Lucas made a motion, which was seconded by Commissioner Niederman, to approve the application based on affirmative criteria and the testimony of Mr. Foster and the applicant's team.

Commissioner Wyman stated that it is not prudent to allow development in the floodplain. He continued to say that while approval may not set legal precedent, he does feel as though a precedent would be set.

Commissioner Kaplan stated that she agreed with Commissioner Wyman.

Commissioner LaMair stated that the proposed location of the pool is likely the best location but the exceptional hardship is not present.

Commissioner Lucas stated that the City Engineer reported that a pool would have a neutral effect on the floodplain. He continued to say that the property had one of the strangest property lines in the City and that constitutes a hardship.

The following votes were recorded:

Wyman:	no
Lucas:	yes
Kaplan:	no

Blum: yes
Niederman: yes
LaMair: no

Interim Chair Blum stated that the motion was defeated with a vote of 3-3.

Commissioner Lucas asked if there were any amendments that could be made that would make the Commission feel more comfortable to vote for the proposal.

Commissioner Wyman replied no.

Interim Chair Blum asked if the application could move forward to City Council with a 3-3 vote.

Deputy City Attorney McAskin replied that the applicant could request another hearing when all members of the Commission could be in attendance.

Mr. Foster stated that the applicant would like to present their application to City Council with the 3-3 vote. He thanked the Commission for all of their comments and feedback and stated all information was helpful.

b. A Request by Verizon Wireless for a Conditional Use Permit to Install a Roof-Mounted Wireless Community Facility at 1400 East Hampden Avenue (Shoppes at Cherry Hills).

Mr. Zuccaro stated that Staff is presenting an application for a Conditional Use Permit to install a roof-mounted wireless communication facility at the Shoppes at Cherry Hills commercial center. He continued to say that the proposal includes installation of wireless antennae on three corners of the roof surrounded by RF-transparent screen towers designed to match the design, colors, and textures of the existing building. Mr. Zuccaro stated that an additional fourth screen wall is proposed to provide symmetry on all corners of the roof, but will not house antennae.

Mr. Zuccaro stated that the screen walls will extend approximately 8 feet and 4 inches above the existing roof parapet height.

Mr. Zuccaro displayed a vicinity map. He noted that the property is C-2, Limited Commercial District. He continued to say that Wireless Communication Facilities are a Conditional Use in the C-2 district, subject to review and approval of a Conditional Use Permit by the Planning and Zoning Commission and City Council.

Mr. Zuccaro stated that the setback requirements for the C-2 are 28 feet from the back of curb of E. Hampden Ave. and 10 feet from all other property lines.

Mr. Zuccaro displayed the photo simulations of the proposed work as well as the existing and proposed coverage maps provided by the applicant.

Commissioner Lucas asked how long the agreement between Verizon and the property owner for was.

Mr. Zuccaro replied he would defer to the applicant. He continued to say that if the equipment was ever abandoned by the provider it would have to be removed.

Commissioner Lucas asked if an 8ft fence or wall is allowed by zoning.

Mr. Zuccaro replied that the maximum height for a fence is 6 feet. He continued to say that taller fencing can be approved based on use.

Commissioner Wyman asked what the fencing provision on a state highway is.

Mr. Zuccaro replied that fences adjacent to state highways are allowed 8 feet in height.

Commissioner LaMair asked if there were different setbacks for outbuildings.

Mr. Zuccaro replied that in the C-2 Zone District, there are only one set of setbacks.

Commissioner LaMair asked if the proposal complies with setbacks.

Mr. Zuccaro replied yes.

Commissioner Lucas asked if the equipment located on the corner would create a blind spot.

Mr. Zuccaro replied that when turning right onto Hampden Avenue, there is an adequate sight line, and turning left is prohibited. He continued to say that the Commission could request an analysis from CDOT and make that analysis a condition of approval of the application.

Commissioner Wyman asked if protective bollards would be required.

Mr. Zuccaro replied that is not a requirement in the code.

Commissioner Niederman stated that the City has done a poor job of providing coverage to the residents. He asked how many households this proposal would affect, and where the City is overall in coverage. He continued to say that the tower at Glenmoor was proposed as an AT&T tower but he is not even sure if it is an active tower.

Mr. Zuccaro replied that this proposal would improve coverage along Hampden Avenue and some portions of the Village. Mr. Zuccaro stated that this proposal is an opportunity to promote more wireless coverage in the City.

Commissioner Niederman asked if the Commission could stipulate that the facility would be open to various carriers.

Mr. Zuccaro replied that the way wireless facilities work is that they are carrier specific. He continued to say that the Code promotes co-location among carriers.

Commissioner Niederman stated that coverage in the City should be addressed.

Commissioner LaMair stated that they were all good points but that was beyond the scope of the Commission.

Commissioner LaMair stated that the screens need some design work, as this is a prominent location.

Kelly Harrison, applicant, stated that there is no limit on co-location options, and that Verizon is leasing three sectors from the owner. She continued to say that if the owner of the building chooses to lease other space to other providers it is not Verizon's decision.

Commissioner LaMair asked if more time could be spent on the screens to make them appear as part of the original building.

Ms. Harrison replied that the screens are made of fiberglass and are fabricated to match. She continued to say while there is not much flexibility in design, she could see if some brick detail could be added.

Commissioner Wyman asked what was going to be located on the corner.

Ms. Harrison replied that this was cabinets which house the equipment such as batteries, underground cabling and the "brains" of the cell sites. She continued to say that the existing pine trees provide some natural screening for the cabinets.

Commissioner Wyman asked if that would impact sight distance for vehicles entering Hampden.

Mr. Zuccaro replied that the equipment enclosure was probably set back far enough considering the geometry of the intersection but that we could have the City Engineer confirm this before the City Council hearing.

Commissioner Lucas asked if it would be possible to locate the cabinets on the backside of the building.

Ms. Harrison replied that there are signage and landscape constraints in the rear of the building. She continued to say that the building has multiple fronts and it was hard to find any location which would meet setbacks and not be intrusive.

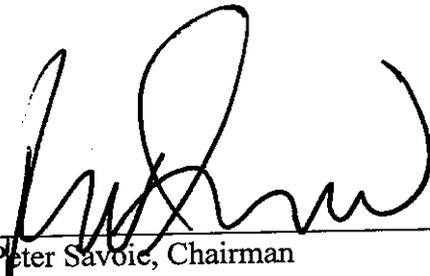
Commissioner LaMair made a motion, which was seconded by Commissioner Wyman, to approve the request by Verizon Wireless for a Conditional Use Permit to install wireless communication facilities at 1400 E. Hampden Avenue, based on the findings outlined in the Staff Analysis section of the January 12, 2016 staff memorandum, subject to the following conditions:

- Addition of design elements to the screen walls; and
- Evaluation of if the equipment enclosure impacts vehicular clear sight distance at the S. Lafayette Street and E. Hampden Avenue intersection.

The motion passed unanimously.

ADJOURNMENT

The meeting was adjourned at 8:43 p.m.



Peter Savoie, Chairman

Cesarina Dancy
Cesarina Dancy, Community Development Clerk