



**CITY OF MANITOU SPRINGS
PLANNING COMMISSION
REGULAR MEETING MINUTES
Wednesday, FEBRUARY 13, 2019, 6:00 pm**



I. CALL TO ORDER

A Regular meeting of the Manitou Springs Planning Commission was held in Council Chambers @ 606 Manitou Avenue. Chairman Delwiche called the meeting to order at 6:03 pm and declared a quorum present. The following Commission members attended:

PRESENT: Chair ALAN DELWICHE
Vice Chair JEANNE VROBEL
Commissioner MIKE CASEY
Commissioner JULIA SIMMONS
Commissioner JULIE WOLFE
Commissioner WHITNEY LEWIS

ABSENT: None

STAFF: Kimberly Johnson, Planning Director
Michelle Anthony, Senior Planner
Dylan Becker, Planner I

GUESTS: Robert Todd, City Council Liaison
Kathryn Sellars, City Attorney's Office (Via Teleconference Call)

II. APPROVAL OF MINUTES

ITEM 1. January 9, 2019

MOTION:

Commissioner Wolfe moved to approve the January 9, 2019 Regular Meeting Minutes of the City Planning Commission, as presented.

SECOND:

Vice Chair Vrobel seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 6-0.

III. NOTICE OF COUNCIL ACTION

ITEM 2. SW 1801 – Subdivision Waiver (Encroachment into No-Build Area) – 2 Keithley Place – Jerry Peterson, Architectural Concepts, on behalf of Elizabeth Crawford, Owner. The Applicant has advised Staff that it would be at least March 2019 before he will be prepared for the public hearing before the Planning Commission.

ITEM 3. ORDINANCE 2318 – Amendments to the Zoning Code Pertaining to Definitions of Dwelling Unit, Kitchens, and Occupancy of a Dwelling Unit. This proposed code revision is still on hold pending evaluation by the Planning Department of a public engagement process for them.

ITEM 4. ORDINANCE 2418 – Amendments to the Zoning Code Pertaining to Short-Term Rental Regulations. See above for status of this ordinance.

At this time, Chairman Delwiche reviewed the meeting procedures for those present in the audience and asked if any Commissioner had Ex Parte Contacts or Conflicts of Interest to declare. Chairman Delwiche stated he lived in the same neighborhood of the request at 40 Via Maria Theresia and had been approached by members of the community regarding the request. Chairman Delwiche stated he informed those who made inquiries he was not permitted to discuss the request. Hearing of no further Ex Parte Contacts or Conflicts of Interest, the meeting continued.

IV. UNFINISHED BUSINESS

ITEM 5. Discussion and Recommendation Regarding Amendments to the Zoning Code pertaining to Sexually Oriented Businesses

Kimberly Johnson, Planning Director, provided the Commission with a history of the Sexually Oriented Business Ordinance and presented the Staff Memorandum dated February 7, 2019.

Hearing no questions for Staff, Chairman Delwiche opened the Public Hearing for public comment.

Darlene Kennedy, 18 Via Loma, stated she felt it was a good idea to follow the example of Colorado Springs regarding a Sexually Oriented Business Ordinance pertaining to public parks in which language was included to apply a separation distance from all public parks whether located within the City or in the periphery of the City.

Ms. Kennedy also stated her other concern regarding the draft ordinance was the fact the separation distance from property owned by the school system only applied if there was an actual school building located on the property, as this meant the school baseball fields would not have the separation distance applied to that location and there was potential a Sexually Oriented Business may locate in the immediate vicinity which may negatively impact the youth in the community. Ms. Kennedy suggested the ordinance state the separation distance be applied to any school owned property which had children occupying it at any time.

Ms. Kennedy inquired if there had been any changes to the proposed draft ordinance since the email including the Staff Report had been sent out. Ms. Johnson responded there had been no changes made to the draft ordinance in this time.

Debra Stockham, 48 El Paso Boulevard, inquired if the green parcels on the Sexually Oriented Business Map included in the Staff Report were meant to represent parks. Ms. Anthony responded this was correct. Ms. Johnson commented any parcel which fell under the hashed areas of the map were within five-hundred feet of one of the sensitive land uses, such as schools, parks, and residentially zoned neighborhoods.

Ms. Stockham commented she wanted to be sure the City included the townhomes she resided in in the residential use separation distance and she was also in agreement with Ms. Kennedy regarding the separation distance from school property.

Debra Mitguard, 203 Beckers Lane, inquired if there was any property located in the City which could potentially become a Sexually Oriented Business under this ordinance. Ms. Johnson responded, as the map showed, there was no available parcel on which a Sexually Oriented Business may locate under this ordinance.

Ms. Mitguard stated there was one little corner of a parcel which appeared there may be a potential for a Sexually Oriented Business to locate and asked for clarification if she was correct in assuming this possibility. Ms. Johnson stated the hatched buffer around sensitive land uses encroached onto the parcel in question, which thereby made the entire property ineligible to become a Sexually Oriented Business. Ms. Johnson further stated the parcel in question was also not developable due to its size and location.

Hearing no further comment from the public, Chairman Delwiche closed the Public Hearing.

Commissioner Wolfe inquired if there was any precedent or litigation regarding other municipalities which had crafted their code in such a way the entire city was exempt, as the City of Manitou Springs was proposing to do under this draft ordinance. Kathryn Sellars, City Attorney, responded there were several cases involving outright bans of Sexually Oriented Businesses, but the current jurisprudence was there needed to be alternative avenues concerning First Amendment Rights. Ms. Sellars stated what had not been tested was the theory which proposed these types of businesses seek a location beyond the municipal boundaries in which the regulations were applied or in an adjacent community, as was the case with this ordinance regarding Manitou Springs and Colorado Springs. Ms. Sellars stated there was some risk involved with this defacto ban for the City and current case law likely did not support this methodology as it had not been tested.

Commissioner Wolfe inquired what the legal costs would be should the City be sued and need to litigate the matter. Ms. Sellars responded this would be dependent on several factors and how far up the court system the case went. Ms. Sellars stated it was also dependent on whether the City was covered for this type of situation under their insurance. Ms. Sellars stated if the matter was litigated to the highest court possible, the City was looking at a potential cost of three-hundred thousand to four-hundred thousand dollars (\$300,000.00 - \$400,000.00).

Commissioner Wolfe inquired if Ms. Sellars was aware of any insurance coverage for this type of situation. Ms. Sellars responded there was the potential for one of these types of businesses to sue the City under the 1983 claim regarding violation of First Amendment Rights and as long as the City had coverage for this type of claim, this type of situation may be covered.

Commissioner Wolfe stated she felt like the City was becoming an incredibly expensive test case for the country.

Chairman Delwiche stated despite the legal risk, the feedback from the community was they would rather take the risk of litigation over the risk of one of these types of businesses opening in the community.

Commissioner Wolfe commented the City Attorney had stated there was no precedent or ruling anywhere in the country which supported this ordinance.

Ms. Kennedy stated the separation distance in the Colorado Springs ordinance was one-thousand feet (1,000 ft.), but the two (2) municipalities' ordinances were almost mirrored otherwise. Commissioner Wolfe responded even if the City's ordinance matched the ordinance for Colorado Springs exactly, the difference was there was still developable land in Colorado Springs and the City of Manitou Springs was proposing a

law that outright banned and prohibited the operation of these types of businesses, which had never been permitted by Constitutional Law anywhere in the country.

Chairman Delwiche stated, at this point, the Commission needed to make a recommendation to City Council whether the Planning Commission supported the ordinance or not and commented he felt the recommendations made by Ms. Kennedy were amenable.

Commissioner Lewis stated she agreed with the recommended changes to the ordinance proposed by Ms. Kennedy and, regarding the separation distance language pertaining to schools and education facilities, suggested the portion in parentheses which stated “This distance limitation shall not apply to property owned by an educational institution or school unless an actual school building is located on the property” be removed or omitted from the draft ordinance language.

Vice Chair Vrobel stated she was not thrilled about the possibility of a business of this type opening in the community and she was concerned about the financial risk to the City in the event of litigation for violation of First Amendment Rights. Vice Chair Vrobel commented Colorado Springs had the alternative of allowing these types of businesses to locate in an industrial zone, whereas the City of Manitou Springs was outright telling these types of operations no and she was soberly concerned about this fact.

Chairman Delwiche stated he was comfortable pushing the ordinance forward as this was the direction City Council had desired to go and felt they were aware of the legal and financial risks involved.

Commissioner Casey stated he agreed with Chairman Delwiche so long as the City had the blessing of the City Attorney. Commissioner Wolfe stated the City Attorney had just informed the Commission there were legal risks and implications in passing this ordinance. Commissioner Casey responded the ordinance stated it had been drafted by the City Attorney’s Office. Commissioner Wolfe responded the City Attorney’s Office can draft any sort of ordinance in which they were paid to draft and that did not mean it was supported.

Commissioner Casey stated he would like to make a motion which incorporated the recommendation made by Commissioner Lewis regarding school facilities and property.

MOTION:

Commissioner Casey moved to forward a recommendation for approval of the Sexually Oriented Business Ordinance with the following amendments:

1. Amend Section 18.08.060.D.2a.vi of the proposed draft ordinance to read “A school or educational facility, whether public or private, serving persons under eighteen years of age.”

SECOND:

Commissioner Lewis seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 4-2. Vice Chair Vrobel and Commissioner Wolfe voted in opposition to the motion as they did not feel comfortable that the proposed ordinance was in the best interest of the City.

V. NEW BUSINESS

ITEM 6. V 1901 and V 1902 – Side Yard Setback Variances (Proposed Lot 1 – 4.2 ft.; Proposed Lot 2 – 2 ft.) – 4 and 6 Waltham Avenue – Kim Jester and Brian Moody, Applicants

ITEM 7. V 1904 – Lot Size and Lot Frontage Variances (Proposed Lot 1) – 4 Waltham Avenue – Kim Jester and Brian Moody, Applicants

Michelle Anthony, Senior Planner, presented the Staff Report dated February 8, 2019.

Commissioner Casey inquired why the requirement for the utility line separation was not mentioned in the proposed conditions of the Staff Report. Ms. Anthony responded the separation was required by the City's Municipal Code and did not need to be stated in the conditions, but she had included a statement regarding this in the conditions of the Minor Subdivision request to follow.

Commissioner Casey inquired if 1205 Manitou Avenue was impacted in any way by these variances. Ms. Anthony responded the physical conditions for this property would remain unchanged or would remain unimpacted by these variance requests.

Vice Chair Vrobel asked for clarification if the sewer lines were required to be separate. Ms. Anthony responded there was a provision in the City Code to allow for more than one (1) unit to be on a shared sewer line, but the Public Services Department had not commented in that regard on this request. Vice Chair Vrobel commented she was aware this had been an issue on several properties in town. Ms. Anthony responded if the Applicants desired for the sewer lines to be shared, there was a process in which to request this with the Public Services Department.

Commissioner Wolfe inquired if there was any guarantee this request would not result in any new development on the property. Ms. Anthony responded there were currently repairs being made to the foundations of the structures, but there was no intention to modify or remove the structures and the property would remain a part of the historic district.

Commissioner Wolfe inquired if the approval could be conditioned on the assumption the Commission was not looking at new construction. Ms. Anthony responded she felt it was amenable to note this as the reasoning for allowing this to occur as part of an existing development. Ms. Anthony commented, however, if the property was sold to new owners and were approved to remove those structures, the structures would lose the grandfathered status which allowed them to be located and oriented as they were currently and any new structures would need to meet the current Code standards.

Hearing no further questions for Staff, Chairman Delwiche invited the Applicant to the podium.

Brian Moody, 1730 Alamosa Drive, stated he felt Ms. Anthony had stated his case very well and added he felt this request was reflective of what existed in real life. Mr. Moody stated he felt it made much more sense for each house to have its own lot.

Commissioner Wolfe inquired if there was any intention to demolish either of the structures. Mr. Moody responded he had no intention to do so.

Hearing no further questions for, or comment from, the Applicants, Chairman Delwiche opened the Public Hearing for public comment.

Jim Brinkman, 6225 Moorfield Avenue, Colorado Springs, stated he was the surveyor for this request and commented he felt the proposed request was an amenable solution to make the best use of the land. Mr. Brinkman also stated he felt the proposal helped alleviate some of the parking concerns of the immediately surrounding neighborhood as well.

Hearing no further comment from the public, Chairman Delwiche close the Public Hearing.

Vice Chair Vrobel stated she felt very strongly the sewer lines needed to be separated due to reoccurring issues in the City when there were sewer line problems. Chairman Delwiche commented this was addressed in the Minor Subdivision item for this property which was next on the agenda.

Commissioner Wolfe stated there was an ordinance which required costs incurred when issues arose to be split between those on the shared sewer line. Vice Chair Vrobel commented this often cost a lot of time and money to resolve in court.

MOTION:

Vice Chair Vrobel moved to approve V 1901 and V 1902 to allow a 2 foot side setback at 6 Waltham Avenue (proposed eastern lot line) and a 4.2 foot side setback at 4 Waltham Avenue (proposed western lot line) where 7.5 feet are required and V 1904 for a Lot Size Variance for proposed Lot 1 at 4 Waltham Avenue of 1,164sf where 4,400sf is required and a Lot Frontage of 39.90 feet where 45' is required with the following findings in support of the Variances:

1. That the representations in the application are valid and the application has met the criteria established in Section 18.32.010* of the Zoning Code;
2. That the reasons set forth in the application and Staff's evaluation in regard to the Side Yard Setbacks on both lots and the Lot Size and Frontage Variances on Lot 1 justify the granting of the variances and the variances are the minimum that will make possible the reasonable use of the land;
3. That the granting of the variances will be consistent with the general purpose and intent of the City's Zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

SECOND:

Commission Casey seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 6-0.

ITEM 8. MNS 1901 – Minor Subdivision (Create Two Lots) – 4 and 6 Waltham Avenue – Kim Jester and Brian Moody, Applicants

Michelle Anthony, Senior Planner, presented the Staff Report dated February 8, 2019.

Commissioner Casey stated he felt disappointed or let down due to the fact the Public Services Department did not provide comment on this request and requested, if it was possible in the future, to somehow insist The Public Services Department to comment on matters such as this. Ms. Anthony responded the Planning Department and the Public Services Department were currently discussing and implementing a better defined process and the hope was there would be a better level of information and work provided.

Commissioner Wolfe inquired if there was some sort of checklist which could be implemented to help receive comment from the Public Services Department. Ms. Anthony stated this was currently in the works. Kimberly Johnson, Planning Director, responded the City was going to modify the way items were distributed for review, the expectations of those reviews, and was currently working with new on-call engineers.

Commissioner Casey suggested putting names on the comments in the review process in order to hold people accountable and to track who said what. Ms. Johnson stated the City would be requiring the commenter in the review to provide their signature.

Hearing no further questions for Staff, Chairman Delwiche invited the Applicants to the podium.

Brian Moody, 1730 Alamosa Drive, Colorado Springs, stated he intended to reline the sewer lines which was essentially like a installing a new sewer line given the technologies out there today in which a new sewer line would essentially be lined into the existing ones. Mr. Moody stated this was not a solution to separate the sewer lines, but would leave the new owners with an issue free sewer line for years to come.

Vice Chair Vrobel inquired if Mr. Moody was opposed to the separation of the sewer lines for the two properties.

Ms. Johnson stated she had spoken with the Public Services Director, Shelley Cobau, and had been informed by her that if units were on separate lots, they were required to have separate water and sewer lines.

Mr. Moody stated the separation of the sewer lines was an additional cost which he did not find ideal but wanted to make the suggestion that, rather than separate the lines, some sort of agreement be written up at the sale of the property which specifically delineated who was responsible when sewer issues arose. Vice Chair Vrobel commented the issue was it would still likely require court and litigation to resolve.

Commissioner Casey asked for clarification regarding the suggestion made by Mr. Moody in terms of how his suggestion would work. Mr. Moody responded there would be an access easement granted regarding parking which included a use agreement which laid out how the sewer was to be maintained and which costs belonged to which lot. Mr. Moody stated there would basically be a legal document which spelled out how the sewer line would be handled and managed going forward between the two (2) properties.

Jim Brinkman, 6225 Moorfield Avenue, Colorado Springs, stated he was not aware of any specific examples in which this had been done regarding a sewer line, but an attorney would need to be hired to brainstorm any and every condition which may arise and how it should be resolved between parties.

Hearing no further questions for, or comment from, the Applicants, Chairman Delwiche opened the Public Hearing for public comment. Hearing none, the meeting continued.

Commissioner Casey stated he did not feel separating the sewer lines was necessary, especially if the Applicant was essentially replacing the existing one as this was an additional cost or burden which would be passed on to the new owners.

Ms. Anthony stated the City Code required the lines to be separated, unless the property owner was able to obtain a waiver from the City Administrator to allow the lines to be shared between two (2) properties and if the Commission wanted to allow for the possibility of this process for the Applicant, even though there was no guarantee the waiver would be granted, this could be included in the conditions of their approval.

Chairman Delwiche stated he had to agree with Vice Chair Vrobel regarding the separation of the sewer lines, as he had a negative experience when he had first purchased his home regarding this same issue.

Commissioner Lewis stated the costs of a new and separate sewer line were likely to be passed on to the new owners and felt comfortable with the access easement agreement suggested by the Applicant which allowed the lots to share a sewer line, if approved by the City Administrator. Ms. Anthony responded the Commission could do so if desired.

Commissioner Wolfe stated she was not comfortable with allowing the waiver regarding the sewer lines and felt they should and needed to be separated. Vice Chair Vrobel agreed as she was aware of the types of issues which may arise as a result of not separating the lines.

MOTION:

Vice Chair Vrobel moved to approve MNS 1901 to create Lots 1 and 2 in the Cougar Holdings Subdivision with the following conditions:

- 1) Prior to filing, the plat shall be updated to include the following:
 - a) The spelling of "Ruxton" shall be corrected on the vicinity map.
 - b) The addition of any easement(s) that may be required for separate sewer and/or water service lines for Lots 1 and 2
 - c) The signature block for the property owner shall be amended to reflect the legal ownership by Cougar Holdings, LLC and note that the person signing the plat is a principal of the company.
 - d) Addition of the signature block for the Planning Commission Chair.
 - e) Any amendments as recommended by the City's consulting Engineer upon review of the final plat document be incorporated.
 - f) A plat note be added stating there are no areas of 30% or greater slope on either lot.
- 2) The unpaved area of the existing driveway and parking front of the existing garage and the additional parking areas conforming to the parking easement shall be paved prior to the filing of the plat, or a guarantee provided if filing of the plat pre-dates these improvements.
- 3) The grade of Waltham Avenue along the frontage of the property shall be added to the Subdivision Site Plan.
- 4) Lot 1 and Lot 2 shall be required to install and maintain separate sewer lines and no waiver shall be granted by the City which may nullify this requirement.
- 5) The specific, detailed easement documents for the access (vehicle and pedestrian) and parking easements benefitting Lot 1 and the Specific Use Easements on Lots 1 and 2 between the cottages shall be provided for Staff review and approval. These easements shall make specific provisions assigning maintenance responsibilities/costs to each property. These documents shall be finalized and provided to the City with the final plat mylar for filing sequentially.

- 6) An easement document or detailed plat note containing requirements and restrictions for the encroachment by the adjacent property in the vicinity of the garage shall be provided to the Planning Department for review and approval.
- 7) A copy of a Title Insurance Policy or Commitment shall be provided to the Planning Department. This document shall also be reviewed by the surveyor to insure there are no easements or other encumbrances that should be recorded on the proposed plat.
- 8) A Certificate of Taxes from the El Paso County Treasurer's Office showing that property taxes are current shall be provided.
- 9) The Applicant has 90 days from the date of approval to provide all required information, corrections and additions, allow time for City review, and submit the final Mylar for filing or this approval will expire.
- 10) The Surveyor shall provide CAD drawings of the final, approved plat at the time of submission of the final Mylar for filing to allow the City to update its GIS data.

SECOND:

Commissioner Wolfe seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 5-1. Commissioner Casey voted in opposition to the motion as he did not feel it was amenable to request the sewer lines be separated considering the costs to do so would likely be passed down to the new owners when sold.

ITEM 9. MiCUP 1901 – Minor Conditional Use (Vacation Rental) – 17 Mayfair Avenue – Joshua and Aaron Smit on behalf of Richard and Sharon Smit, Owners

Michelle Anthony, Senior Planner, presented the Staff Report dated February 8, 2019.

Commissioner Wolfe inquired if it was permitted in the City to keep a motor home in the driveway with someone living in it. Ms. Anthony responded it was permitted for them to be parked on private property, but it was not permitted for them to be occupied as a residence or used for habitation while parked on private property.

Commissioner Wolfe stated she felt it was wise for the Commission to be clear moving forward with this request that guests may arrive in these types of vehicles, but were not permitted to use them as lodging while on site. Ms. Anthony responded the Code covered the fact it was not permitted to have anyone living in one, but the Commission may add a statement in this regard to the conditions if desired.

Vice Chair Vrobel asked for clarification regarding whether the short-term rental regulations required property managers to reside within thirty (30) minutes of the rental operation in case of an emergency. Commissioner Wolfe stated she could not recall ever approving a property manager living as far away as Woodland Park, as was the case in this request. Ms. Anthony responded the Code did not state the minimum time/distance required, as it only stated the manager needed to reside within a reasonable distance from the rental property, but the Commission had approved requests where the manager was within fifteen (15), and even, thirty (30) minutes distance from the rental property.

Chairman Delwiche stated even though the Code did not specify the time/distance for property managers, it did state that the contact needed to be in El Paso County. Vice Chair Vrobel commented Woodland Park was located in Teller County, not El Paso County. Ms. Anthony responded Calhan, which was a further distance from the City of Manitou Springs than Woodland Park, had been approved by the Commission in the past.

Hearing no further questions for Staff, Chairman Delwiche invited the Applicants to the podium.

Aaron Smit, 17 Mayfair Avenue, stated he had no comment regarding the Staff Report.

Ms. Anthony inquired if the Applicant intended to allow guests to arrive in recreational vehicles. Mr. Smit responded this had not yet been determined, but if they did decide to allow this, the guests would not be permitted to lodge or sleep in it while renting the space.

Vice Chair Vrobel inquired if Mr. Smit was the son which would be living at the rental location when it was not rented by guests and the address of the Woodland Park location which would be used as the emergency contact. Mr. Smit responded 1505 Sunshine Circle in Woodland Park, near the elementary school.

Hearing no further questions for, or comment from, the Applicants, Chairman Delwiche opened the Public Hearing for public comment.

Debra Stockham, 48 El Paso Boulevard, inquired what, if any, planning process would be implemented regarding the possible construction of the garage apartment on the property. Ms. Anthony responded the Planning Department would need to determine whether the garage was on a separate, platted lot or on the same platted lot, but if located on the same lot, the property had enough square footage to allow for the second unit.

Chairman Delwiche inquired the zoning of the property. Ms. Anthony responded the property was zoned Commercial and it may benefit the owners to rezone the property to General Residential as the property then met the minimum square footage to allow the second unit.

Commissioner Wolfe inquired if this meant that once the garage unit was constructed, the Applicants would not be required to come before the Commission to approve its use as a short term rental. Ms. Anthony stated if the Applicants wished to use the future garage and apartment as a short term rental, they would be required to seek the approval of the Commission in a modification or amendment to the Conditional Use Permit. Ms. Anthony commented the garage and apartment were not a part of the request in this application.

Ms. Stockham inquired if the garage and apartment was approved as a short term rental in the future, whether the parking requirement would be impacted. Ms. Anthony responded the Applicants would be required to meet the parking requirements for the additional unit.

Vice Chair Vrobel inquired, since the property was currently zoned Commercial, if the owners were permitted to construct the apartment over the garage at any time. Ms. Anthony responded the apartment would be considered a stand-alone residential unit, which was not a use-by-right in the Commercial Zone which was the reason for suggesting the rezoning of the property.

Hearing no further comment from the public, Chairman Delwiche closed the Public Hearing.

Vice Chair Vrobel commented she felt this was one of the better properties in town which could be utilized as a short term rental operation due to its size and parking accommodations.

Commissioner Casey agreed.

MOTION:

Vice Chair Vrobel moved to approve MiCUP 1901 for operation of a short-term vacation rental at 17 Mayfair Avenue with the following conditions:

1. A maximum of two (2), adults and up to two (2) children are allowed when a single bedroom is rented to guests. When there is no resident occupancy of the second bedroom, up to four (4) adult and up to two (2) children are allowed at any one time. Guests shall arrive in no more than two vehicles.
2. All advertisements and/or listings for the vacation rental must contain the approval number (MiCUP 1901) and copies of advertisements and/or listings must be submitted to the Planning Department for retention in the property file. The advertisement(s) and postings shall also note guests must not arrive in more than two (2) passenger vehicles. If the property owners want to accommodate oversized vehicles, RVs, campers, or trailers, guests will need to be advised of this and any limitations the owners wish to place on such parking.
3. The required fire extinguishers, smoke detectors, and CO² detectors must be in place as required by code.
4. A final guest notice complying with 18.89.040.G (1-7) must be submitted to the Planning Department for review and approval prior to issuance of a City Business License. Notice must also include a statement prohibiting smoking outside of the house so as to not disturb neighbors or cause potential fire issues.
5. In event the resident occupant is not available for more than a 24-hour period, or if the entire home is rented to a single guest party, the additional emergency contact must be available during any such periods/rentals.
6. The owners must obtain a business license from the City of Manitou Springs and the required tax licensing prior to listing the property for vacation rental operation.
7. In a conspicuous location for the guests, the owner must post emergency evacuation procedures for wildfire or flooding. Staff recommends a map showing an appropriate evacuation route be added to the Property Rules.
8. The guest parking area shall be paved (concrete, asphalt or pavers) as a part of the anticipated garage construction on the property, or no later than one year after initiation of the vacation rental licensing, whichever occurs first.
9. If a garage is constructed on the property, the required on-site parking for vacation rental guests must be maintained during and after construction.

SECOND:

Commissioner Lewis seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 6-0.

ITEM 10. MiCUP 1902 – Minor Conditional Use (Vacation Rental) – 40 Via Maria Theresia – Noel Black, Applicant

Michelle Anthony, Senior Planner, presented the Staff Report dated February 8, 2019.

Vice Chair Vrobel inquired if the Applicant would be living on site. Ms. Anthony responded the Applicant stated he would be in residence at the short term rental operation.

Chairman Delwiche stated he had counted ten (10) adjacent properties, not four (4), as shown on the map in the Staff Report and the arrow on the map was actually pointing to the wrong property. Ms. Anthony confirmed this and stated the property was actually two (2) properties over from where the arrow had indicated.

Chairman Delwiche inquired if it was a good idea to postpone this request as the site plan for the request seemed grossly inaccurate as it depicted structures which were no longer in existence and did not include the structures which were added to the property under a variance granted by the Commission three (3) years prior.

Chairman Delwiche also inquired if the required parking was calculated at four (4) spaces for this request as he had come to a different calculation under the Code. Ms. Anthony responded there were three (3) spaces for guests and one (1) space for the residents and she had not suggested expansion of the available parking in the driveway to accommodate the second space for the residents, but the Commission could do so in the conditions if desired.

Chairman Delwiche stated the Code called for two (2) spaces for the residents and wondered why this Applicant was not expected to follow the requirements of the Code. Ms. Anthony responded the Commission could certainly require this.

Hearing no further questions for Staff, Chairman Delwiche invited the Applicants to the podium.

Noel Black, 40 Via Maria Theresia, stated he had originally requested eight (8) guests total, four (4) of which would be adults and four (4) would be children, and was confused regarding the parking requirements in the Code. Mr. Black stated if the flower beds were removed, he believed it was possible the off-street parking area could easily accommodate four (4) vehicles.

Mr. Black inquired if the parking requirements allowed for two (2) vehicles for guests which provided for four (4) adults and up to four (4) children. Ms. Anthony stated Mr. Black had informed her the property could accommodate eight (8) guests total including the downstairs bedrooms at a later date. Mr. Black confirmed this and stated he understood this was not feasible at this time, but the short-term rental request heard just before this had two (2) guest bedrooms with two (2) adult guests and two (2) children which he had requested originally. Ms. Anthony stated she did not see any mention of children in reviewing the request.

Mr. Black inquired if it was possible for his adult guests to bring children or if the total number of guests permitted was four (4) guests. Ms. Anthony inquired if Mr. Black had sleeping accommodations for the

children. Mr. Black responded he had a pull out couch and could put a bunk bed in one of the upstairs bedrooms to accommodate children.

Vice Chair Vrobel stated the hospitality code requirements called for separate beds and the maximum occupancy of a queen sized bed was two (2) persons. Mr. Black stated he could easily put in separate beds if this was required.

Mr. Black inquired if the previous Applicant had provided these same accommodations for his guests in their site plan. Ms. Anthony responded the previous Applicant had roll-away beds to accommodate children and this information was provided in their application. Mr. Black stated he could very easily provide the same for his guests.

Vice Chair Vrobel inquired the physical address of the property manager in the event the Applicants were out of town. Mr. Black stated the emergency contact and property manager was located on Templeton Gap near Fillmore Street in Colorado Springs, but would be relocating to the west side of Colorado Springs in the near future.

Vice Chair Vrobel inquired if the Applicant was amenable to prohibiting smoking anywhere on the property. Mr. Black responded he was amenable to the request as he did not want anyone smoking in his house. Mr. Black commented he would not disallow the use of cannabis edibles, however.

Chairman Delwiche inquired if guests would be permitted to climb on the formations and land features located in the rear of the property. Mr. Black responded he intended to allow guests access to all parts of the property.

Chairman Delwiche inquired, regarding the treehouse located near the adjacent neighbor's window, if children would be required to not use the structure after 10:00 PM. Mr. Black responded he would allow children to play in the treehouse until 9:00 PM on weeknights and 10:00 PM on weekends.

Mr. Black commented he felt this was reasonable to request of his guests and he had seen just about everyone in the room in attendance of his neighbor's parties which often had music and loud guests until 11:00 PM or later. Mr. Black stated he was just trying to abide by what was laid out in the agreement.

Chairman Delwiche stated this was a Conditional Use Permit, which meant if conditions needed to be applied, they would be applied. Chairman Delwiche further stated the previous request and this request were separate and different requests as the previous request did not have other properties and neighbors in extremely close proximity as this request did. Mr. Black stated he had strong relationships with his neighbors and many of them had children themselves, but he had every intention of abiding by the City's quiet hours.

Chairman Delwiche inquired if Mr. Black was amenable to enforcing quiet hours on weeknights at 8:00 PM, as opposed to 9:00 PM. Mr. Black responded if someone was requesting this, he was amenable to the request, but he did not want rules to be arbitrarily applied to his request which were not based on an actual issue rather than a hypothetical situation. Mr. Black stated he had invited all of his neighbors to attend this hearing and voice their concerns if they had any and the response he received from them was excitement in favor of his request.

Vice Chair Vrobel stated the majority of applicants for a Minor Conditional Use Permit were more willing to enforce rules and regulations and Mr. Black seemed to be coming across as an anything goes type and

the Chairman's questions were meant to ensure the welfare of the neighborhood and ensure the Applicant was capable of enforcing the conditions applied to the operation.

Hearing no further questions for, or comment from, the Applicant, Chairman Delwiche opened the Public Hearing for public comment.

Joyce Wolf, 255 Via Linda Vista, stated she was not excited about this type of use in the neighborhood and inquired the potential opportunity for others to follow in Mr. Black's footsteps. Chairman Delwiche responded if this request was approved, the City would not allow another short-term rental operation within a five-hundred foot (500 ft.) radius of this property and only two percent (2%) of the available residential structures in the City may be used as short-term rental operations. Chairman Delwiche stated this meant there was only the potential for fifty eight (58) operations of this type allowed in the City and there were currently forty-four (44) in operation should this request be approved.

Ms. Wolf stated she felt the five-hundred foot (500 ft.) radius was not substantial enough. Chairman Delwiche stated there was actually interest in several of the neighborhoods in the City to decrease the required separation distance and there was an upcoming opportunity for residents to attend a public hearing on the matter in the near future. Chairman Delwiche encouraged residents to attend and voice their concerns and desires.

Commissioner Casey stated every short-term rental has to go through this process and be approved by the Planning Commission. Commissioner Casey stated, as representatives of the community, the Commission had the ability to review and deny these types of requests, but there had to be a legal, Code-bound, reason to do so and not just a "not in my backyard" argument.

Ms. Wolf inquired if there was any process for a neighborhood which was opposed to these types of operations to disallow them in the neighborhood. Commissioner Casey responded there was not. Chairman Delwiche stated there was not a process for this at this time, but could be a potential change to the future regulations and again encouraged attendance at the upcoming public hearing.

Darlene Kennedy, 18 Via Loma, stated Ms. Anthony was correct in stating the off-street parking for this request, even though not utilizing or encroaching onto the travelled roadway, was likely utilizing part of the platted right of way and this was a common issue in this neighborhood. Ms. Kennedy stated her neighborhood in "the Vias" had nice roads and pointed out a substantial portion of the parking for the Red Wing Motel was also in the platted right of way. Ms. Kennedy stated she had tried to get this issue resolved several years ago to no avail and when the parking lot was refurbished, the issue continued and now residents were forced to walk in the street. Ms. Kennedy stated she did not feel it was appropriate for rental properties to be utilizing the right of way for parking purposes as this space belonged to everyone and was needed for pedestrian traffic.

Michael Lambert, 16 Via Maria Theresia, stated his main concern was the parking and outdoor smoking, both of which were covered by Ms. Anthony. Chairman Delwiche commented the Commission was tied to the Code and was required to follow what it stated.

Ms. Kennedy stated the Code defined off-street parking as being located on or within the boundaries of a given property and felt the parking for this request needed to be off of the street. Ms. Anthony responded the three (3) existing parking spaces met this requirement and the actual issue arose with the addition of the fourth space due to the fact that even utilizing part of the platted right of way the space was too short to accommodate a vehicle under the provisions of the Code. Ms. Kennedy commented the Applicant needed

a Variance and requested the Commission consider the modifications as it was important to her and the neighborhood to keep the roads nice and clean for pedestrian traffic.

Debra Stockham, 48 El Paso Boulevard, inquired how strict Ms. Anthony intended to be regarding not permitting guests to arrive in recreational vehicles on this request. Ms. Anthony responded the proposed recommendation was to not allow guests to arrive in recreational vehicles, but this was a decision which was made by the Commission, not her.

Ms. Stockham stated she felt six (6) guests was more appropriate for the neighborhood as opposed to the eight (8) requested by the Applicant.

Ms. Kennedy inquired if allowing four (4) adults and four (4) children to occupy two (2) bedrooms was in compliance with the requirements of the Housing Code. Ms. Anthony responded there needed to be separate sleeping accommodations, as mentioned previously, and this actually fell under the definition of lodging, not residential housing which was not the same thing.

Mr. Black stated he wanted to clarify some of the statements made by other residents in the neighborhood. Mr. Black stated there were no sidewalks in his neighborhood anywhere and he had lobbied the City very hard to pave Via Maria Theresia which did eventually occur. Mr. Black stated he felt the implication made by some of the neighborhood residents was he did not care about the neighborhood or the right of way, which was not at all the case and he wanted to clarify this on the record. Mr. Black stated he felt a lot of the concerns raised by some of the neighbors were “not in my backyard” arguments which he found to be upsetting.

Chairman Delwiche stated he did not feel anyone was insinuating anything about Mr. Black personally and the Commission just wanted to ensure the conditions imposed on the operation would be followed. Mr. Black stated he understood this and wanted a clear expectation of how parking in this neighborhood should work given there were no sidewalks or curbs and it was difficult to determine what was in the right of way and what was not. Chairman Delwiche responded Mr. Black could obtain a survey to determine exactly where the right of way was in relation to the parking and the rest of the property.

Mr. Black inquired if he would need to pay for a new survey in order to determine whether or not he was able to expand the parking area for the fourth parking space.

Ms. Kennedy handed Mr. Black a copy of the plat of his property and stated the plat contained all of the measurements Mr. Black would need.

Hearing no further comment from the public, Chairman Delwiche closed the Public Hearing.

Vice Chair Vrobel stated she was thoroughly confused regarding the number of guests and number of parking spaces which would be permitted or required as part of this request. Commissioner Wolfe commented there was also the issue of the residential parking for the owners who would be living on site as well.

Kimberly Johnson, Planning Director, stated the parking requirements were not based or calculated on the number of guests permitted, but on the number of rooms to be leased for short-term rental lodging. Ms. Johnson stated at two (2) rooms to be leased, with one (1) parking space required for each room, the required guest parking was two (2) spaces. Ms. Johnson stated the residents were required to maintain two (2) spaces, separate from the required parking for the guests, for their residential use which made the total required

parking for this request at four (4) compliant, off-street spaces which measured nine feet by eighteen feet (9 ft. x 18 ft.) each. Ms. Johnson also stated it was the responsibility of the property owner or Applicant to provide the information and documentation necessary to prove this requirement was met.

Ms. Anthony commented the City had typically focused more on the adult guests rather than children simply due to the fact they were arriving in the same vehicle with the adults and it was not unusual for adult guests to arrive with one (1) or more children.

Chairman Delwiche commented it may be wise to recommend six (6) guests total, comprising of four (4) adults and two (2) children.

Commissioner Simmons stated she was confused as there had been mention of altering the landscaping or removing the flower beds to potentially allow for a fourth parking space. Ms. Anthony stated this was correct and there were currently three (3) compliant parking spaces as is.

Commissioner Casey stated he felt it was reasonable to condition the approval to only allow for six (6) guests at any given time.

MOTION:

Commissioner Wolfe moved to approve MiCUP 1902 for operation of a short-term vacation rental at 40 Via Maria Theresia with the following conditions:

1. The vacation rental shall accommodate no more than six (6) guests, four (4) adults and two (2) children in a maximum of two (2) passenger vehicles. The owner shall provide a total of four (4) compliant parking spaces on site.
2. All advertisements and/or listings for the vacation rental must contain the approval number (MiCUP 1902) and copies of advertisements and/or listings must be submitted to the Planning Department for retention in the property file. The advertisement(s) and postings shall also note guests must not arrive in more than two vehicles and oversize vehicles, RVs, campers, or trailers are not allowed and the house will not be rented to guests who arrive in these types of vehicles.
3. The required fire extinguishers, smoke detectors, and CO² detectors must be in place as required by code prior to operation.
4. A final guest notice complying with 18.89.040.G (1-7) must be submitted to the Planning Department for review and approval prior to issuance of a City Business License. The Notice must include a statement prohibiting smoking of any kind inside or outside of the house. Guests will also be informed that quiet hours are 9pm on weekdays and 10pm on weekends.
5. Additional information, such as location and distance from the subject property, of the back-up contact person identified in the application must be provided. If this back-up is not satisfactory, then the owners must not schedule guests during any time they will be unavailable for more than 24 hours, or will be required to provide an additional, suitable emergency contact who will be available during any such periods.
6. The owners must obtain a business license from the City of Manitou Springs and the required tax licensing prior to listing the property for vacation rental operation.
7. In a conspicuous location for the guests, the owner must post emergency evacuation procedures for wildfire. Staff recommends that a map showing an evacuation route be added to the posted notice.
8. This approval is specific to owner-occupancy of the property. Before any changes are made to the

approved MiCUP, the Applicant will need to submit a new application and through the approval process under the code provisions at that time. One item that will need to be addressed before any increase in the number of guests will be a compliant, fourth off-street parking space.

SECOND:

Commission Simmons seconded the motion.

DISCUSSION:

There was no discussion regarding the motion.

VOTE:

Motion passed, 6-0.

VI. OTHER BUSINESS

There was no Other Business to discuss.

NON-AGENDA ITEMS FOR DISCUSSION:

Chairman Delwiche stated he would like to see the Commission tighten the manner in which it operated and he would also like to see the meeting packets out by no later than the Friday before the meeting was to occur. Ms. Anthony responded it was absolutely the preference of Staff to accomplish this very thing but, with the workload the Planning Department was currently experiencing, this was becoming more and more challenging as time went to successfully accomplish.

Commissioner Casey inquired if there was any issue regarding the Applicants submitting documents late or whether this issue was solely related to the current workload of the department. Ms. Anthony responded it was becoming more difficult given the time constraints and current workload to perform a thorough review on many requests in the manner in which the City and the Applicants deserved.

Commissioner Casey inquired if there was a way to expedite the Minor Conditional Use Permit process as a means of saving Staff time and suggested only including areas of concern regarding a request in the Staff Report rather than covering the entire Vacation Rental Code in each report. Commissioner Casey commented he felt the train had come off the rails at this point, especially considering that Staff often had to work late into the evenings to produce the packet materials, and wanted to know the issues which led to this point in order that the Commission may be able to help resolve the issues.

Vice Chair Vrobel stated she felt it would help if the Applicants were better prepared as well. Chairman Delwiche stated he agreed with Vice Chair Vrobel.

Ms. Johnson stated she felt the blame fell squarely on the Planning Department for accepting an application which was incomplete or with inaccurate information. Ms. Johnson stated the Planning Department was currently working to reconfigure the review process and how it obtained comments from other departments in the City as she did not feel anyone looked good when there were no comments provided for a given review, yet clear issues existed.

Ms. Johnson stated the current situation was difficult, especially coordinating with Public Services, as there were numerous positions vacant, numerous illnesses and injuries, and an extremely heavy workload. Ms. Johnson stated the number of projects and the heavy workload was being experienced City-wide and by all departments and felt the City was in a bit of a mess from her perspective as a new staff member. Ms. Johnson

stated every employee was doing the best they could with the resources at hand, but the resources were pretty skimpy and there was a lot of work going on.

Ms. Johnson stated her department was currently looking at ways to increase efficiency, perhaps by addressing only areas of concern in a Staff Report as suggested by Commissioner Casey, but the difficulty was balancing efficiency with how much the public and local community demanded, which she felt was quite a lot for a community of this size.

Ms. Anthony commented her only concern in solely focusing on areas of concern in the Staff Reports was the public thinking and complaining Staff did not fully or thoroughly review the request. Ms. Johnson agreed and commented this was all made more difficult by the extreme scrutiny under which the department had with the public. Ms. Johnson stated Staff was working to figure out how to strike that balance.

Ms. Anthony stated with the heavy workload it had become a real struggle to finish and accomplish tasks on time. Vice Chair Vrobel commented there had also been a long period of time in which there was no Planning Director. Ms. Anthony stated this was only a part of the issue as over the past few years there were simply more projects, more applications, more committees, more interactions, and more planning being done in the City while Staff had not increased to keep up.

Ms. Anthony stated she wanted to Commission to know she was not satisfied with the quality of work she was able to produce given all of the constraints and heavy workloads experienced.

Chairman Delwiche inquired if the Commission needed to push back on City Council to make changes. Ms. Johnson replied she did not know how to answer that question for the Commission other than to inform them there had been recent discussions at the Staff Director level regarding many members of Staff reaching their boiling points due to the numerous projects and long hours. Ms. Johnson also stated there were numerous daytime meetings, one after another, which further limited the available time of Staff to complete and work on projects. Ms. Johnson stated there were somewhere near fifty (50) or sixty (60) projects going on which had nothing to do with the day to day tasks, permits, applications, and submittals received.

Ms. Johnson stated this meeting was her third night meeting this week and expecting Staff to work twelve (12) hour days on a regular basis was not reasonable or sustainable. Ms. Johnson commented she needed to take care of her Staff because, if she did not, they would not be able to take care of her and would then not be of any usefulness to the boards, commissions, and committees.

Commissioner Simmons inquired if the Commission could tighten up on the implementation of Robert's Rules in order to avoid the circus which happened during this meeting concerning numerous people talking and multiple conversations occurring at the same time. Commissioner Simmons commented testimony was intended for testifying, not to get to the podium to ask Staff a question. Ms. Johnson stated questions should be directed to the Commission and she would like to do some training with the boards, commissions, and committees in this regard.

VII. ADJOURNMENT

Hearing no further business before the Commission, Chairman Delwiche adjourned the meeting at 9:09 pm.