

MINUTES
CARBONDALE PLANNING AND ZONING COMMISSION
Thursday March 14, 2019

Commissioners Present:

Michael Durant, Chair
Ken Harrington, Vice-Chair
Nicholas DiFrank (1st Alternate)
Jay Engstrom
Jeff Davlyn

Staff Present:

Janet Buck, Planning Director
John Leybourne, Planner
Tarn Udall, Town Attorney

Commissioners Absent:

Jade Wimberley
Marina Skiles
Tristan Francis (2nd Alternate)
Nick Miscione

Other Persons Present

The meeting was called to order at 7:00 p.m. by Michael Durant.

February 28, 2019 Minutes:

Jeff made a motion to approve the February 28, 2019 minutes. Nicholas seconded the motion and they were approved unanimously.

Public Comment – Persons Present Not on the Agenda

There were no persons present to speak on a non-agenda item.

Resolution 3, Series of 2019, approving a SUP at 296 S. 3rd Street

Ken made a motion to approve Resolution 3, Series of 2019. Jay seconded the motion and it was approved unanimously.

Continued Public Hearing – Minor Site Plan Review, Special Use Permit & Variances – 159 Sopris Avenue - Applicants: Jerod & Sharon Samuelson

Janet said that this is a continued public hearing to consider a Special Use Permit and a Minor Site Plan Review to renovate the abandoned CMU structure and convert it into a single family residential dwelling. She stated that the request will require a variance from the 5 ft. front yard setback to allow a 0 ft. setback and a variance from the minimum side yard setback of 5 ft. to allow a 3.5 ft. setback.

Janet explained that the Commission first considered this item on January 10th. She said that the hearing was continued to tonight to allow time for the applicant to address concerns regarding the building's encroachment onto the property to the east.

Janet stated that the applicants have resolved the problem by removing 3.5 ft. along the length of the easterly side of the building. She said that this eliminates the encroachment and provides a 3.5 ft. setback to allow room for maintenance of the structure.

Janet stated that the applicant has also submitted some additional information in response to Commission's comments:

- ILC prepared when the applicants purchased the property. It does not show the encroachment.
- New ILC prepared by Sopris Engineering.
- Plan which shows a distance of 22 ft. from the front door to the driving lanes of Sopris Avenue
- South building elevation, letter noting the use of stucco and the addition of landscaping along the south side of the building façade.

Janet said that she did a new zoning check based on the new Site Plan. She explained that with the exception of the setbacks, the proposal is in compliance with the UDC.

Janet noted for the record that when she says that the building wall is 3.5 ft. from the east property line. She said that she did not take into account the roof overhang, which is about a foot. Janet said because of that, the proposal is for a 3.5 ft. setback for the building and 2.5 ft. setback for the roof overhang. She noted the noticing should be fine as it was for a 0 ft. setback.

Janet thanked the applicants for their efforts getting the encroachment cleaned up.

Ken said that the plan shows 187 sq. ft. of private outdoor space and that the requirement is 210 sq. ft.

Janet stated that this is a single family home and that she wasn't quite sure whether the code requires private outdoor space but since they showed it on their site plan, she included the square footage. She noted that the size can easily be increased.

Jay asked about condition #2, that all drainage shall be retained on site. He said that he has never seen this request before.

Janet explained that this condition stemmed from when there was an encroachment over the east property line. Staff didn't want the structure to drain onto that property. She said that this condition is still applicable for the right-of-way.

Michael stated that the shed roof goes away from the right-of-way.

Janet stated then the condition is probably not necessary anymore

Nicholas stated that taking care of one's own drainage is not a bad idea. He said that it won't create a swale over time.

The applicant, Jerod Samuelson, explained that as per the Commission's recommendation that they reached out to the neighbors regarding the encroachment. He said that they decided it was best to move the wall to clear up both properties from the encroachment.

There were no members of the public present.

Motion to Close Public Hearing

A motion was made by Jeff to close the public hearing. Nicholas seconded the motion and it was approved unanimously.

Ken asked if there was enough of the remaining structure left after cutting off the 3 feet to make it economical.

Sharon Samuelson stated that ultimately that they would have like to have the extra square footage to maximize that east side but that it wasn't feasible to move the entire structure to keep the existing walls.

Jerod stated that they will still have a two bedroom home and that it comes out to be about 150 sq. ft. that they are losing. He said that they have talked to a contractor who advised them that it will still be a marketable property.

Ken said that he appreciates the clarification of the setback from the road.

Michael said that ten percent of the old building is being eliminated.

Nicholas told the applicants that he appreciates their efforts.

Further discussion ensued regarding drainage.

Motion

Ken made a motion to approve the Site Plan, Special Use Permit, Front and Side Yard Variance with the conditions and findings in the Staff report. Nicholas seconded the motion and it was approved unanimously.

Yes: Michael, Jay, Nicholas, Ken, Jeff

No: none

PUBLIC HEARING – Unified Development Code (UDC) Zone Text Amendment – Wireless Facilities

Janet introduced one of the Town Attorneys, Tarn Udall of Holland and Hart. Tarn said that she works with Mark Hamilton and that she has been helping Janet with the wireless facilities regulations.

Janet stated that this is a public hearing for the purpose of considering amendments to the UDC to include regulations related to Wireless Facilities, including Small Cell Antennas.

Janet said that the Commission is required to hold a public hearing and recommend approval of the amendments or recommend denial. She stated that the Commission may also continue the public hearing.

Tarn outlined the following:

- By way of background, the Town is developing these regulations in response to recent developments in federal and state law which require that the Town address certain types of wireless facilities.
- State Statute
 - enacted in 2017 to address small cell facilities and networks and access to rights of way
 - statute gives providers right to locate small cell facilities on municipal infrastructure in public rights-of-way
 - makes small cell facilities a use-by-right in any zone district
 - shortens timeframe that municipalities must act on an application
 - 90 days for complete applications for new small-cell facilities
 - 150 days for other facilities
 - treat installation of multiple facilities as a consolidated application/single permit
 - no discrimination amongst providers
- FCC
 - on the federal level and more recently, the FCC approved new rules to streamline deployment of small cell technology
 - new “shot clocks” for processing small cell applications
 - 60 days for small cell facilities on city infrastructure
 - 90 days from when complete application – new standalone
 - 150 days for new wireless facilities – excluding small cell
 - limiting permit fees municipalities can charge providers
 - at same time, FCC issued a declaratory ruling, to clarify that federal statute prohibits municipalities from adopting regulations that “materially inhibit” small wireless facility deployment
 - municipalities have until April 14 to adopt regulations/design standards for new small cell antenna facilities

- FCC order is being challenged in federal court

Janet stated that the latest generation of wireless technology is called Fifth Generation or 5G. She said that 5G is intended to provide faster wireless service and support more wireless connections. She said that 5G utilizes small cell antenna technology.

Janet explained that as a result, wireless providers such as Verizon, AT&T, T-Mobile, etc., will most likely be requesting approval to allow the installation of small cell antennas. She said that because of their small coverage area, there needs to be a greater number of small cell facility sites than traditional cellular towers. She stated that the small cell antennas can be placed on buildings, light poles, towers and new base stations or alternative towers. She said that they are generally three cubic feet in size.

Janet said that Tarn Udall and I began drafting language to address wireless facilities. She stated that as we began this work, we found that the UDC is mostly silent on wireless facilities. She explained that In order to bring the UDC up to date with wireless facility technology, the draft code amendments also include regulations on other wireless facilities.

Janet said that the draft regulations are a work in progress. She stated that we anticipate it will take two meetings for the Planning Commission to review them, provide direction to Staff and finalize them for the Board's consideration. She explained that there are some threshold questions which we would like the Commission to weigh in on so Staff can complete the draft regulations.

Janet stated that the main changes to the UDC would be:

- Adding definitions
- Establishing new uses in the Land Use Table
- Creating new review processes
- Adding design standards for wireless facilities and infrastructure associated with those facilities, i.e., base stations, towers, etc.

Points of Discussion

- Clarify whether the wall-mounted and roof-mounted facilities are small cell or non-small cell
- Check Aspen's regulations
- Can you prohibit wall- or roof-mounted wireless facilities in R/LD and OTR
- Do not allow non-small in the R/LD and OTR zone districts
- Utilize conditional use permits instead of special use permits
- Will old technology still be relevant? The answer is yes
- Since the rights-of-way aren't zoned, is there a way to classify them?

- Street hierarchy mapping, i.e., alley, collector, arterial, sub-arterial was suggested
- Higher level of camouflage in street verses alley
- Protect the alleys
- Alleys can provide adequate separation
- Japan was overrun with wireless facilities and it changed their character
- How restrictive can the Town be? That is the preference.
- It is easier to loosen regulations rather than make them tighter
- Possible to prohibit small cell towers?
- Look into manhole cover or underground only
- Incentivize them to work with private property owners
- Do we have ability to determine what information is collected? Surveillance City?
- Will a provider overwhelm Staff with applications?
- Sequencing rules, cap on number applications submitted
- Boxes and transformers can be more of an issue

Motion to Continue the Public Hearing to March 28

Jeff made a motion to continue the public hearing to March 28, 2019. Ken seconded the motion and it was continued unanimously.

Staff Update

Janet gave an update on the small cell wireless code she has been working on.

Commissioner Comments

Jay indicated that he would not be at the 4-11-2019 meeting.

Nicholas said he would not be at the March 28, 2019 meeting.

Motion to Adjourn

A motion was made by Ken to adjourn. Jeff seconded the motion and the meeting was adjourned at 8:34.