

MINUTES OF THE MEETING OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF SODA SPRINGS, CARIBOU COUNTY, IDAHO, HELD JULY 12, 2022.

ROLL CALL SHOWED THE FOLLOWING PRESENT:

Charles Fryar–Chairman
Lori Anne Lau-Vice Chairman
Damien Guthmiller
Jess McMurray
Chris Guedes

ALSO, PRESENT:

Alan Skinner, City Planner/Engineer
Andrea Haderlie, Secretary
Gregg Haney, City Attorney

EXCUSED:

Mitch Hart, Councilmember
Drew Erickson
Tysen Hopkins

6:00 PM-Chairman Fryar called the meeting to order. Chairman Fryar mentioned Commissioner Guthmiller is resigning as a commissioner; this will be his last week. He said we appreciate all you've done.

Chairman Fryar questioned if they had a chance to go through the minutes for this last month. Vice Chairman Lau voiced how I read it, the verbiage, and then the chart. None of the size decisions allowed for commercial properties in a commercial area. She doesn't think it may have been clear, and the chart talks about residential. She mentioned that by her memory, it was decided that 20 ft. and bigger needed a conditional use permit. She suggested it got lost in translation. She questioned how we were going to fix it with an addition later. She stated she doesn't know the best way to deal with it. Secretary Haderlie commented that the best way to deal with it is for the commission to make motions. City Planner/Engineer Skinner commented you approve the minutes with the changes, and everybody votes, and the minutes will be adjusted. Commissioner Guedes mentioned he thinks it was lost in translation, and we got our thoughts twisted around the C-1 and C-2 that people live in. If they were using C-1 as residential, then the residential rules apply to C-1, which comes to the 10 ft. and the 20 ft., but if C-1 is used as commercial, it was 20 ft. Commissioner McMurray stated the spreadsheet says that. Commissioner Guedes mentioned it says 20 ft with a conditional use; C-1 using it as commercial you should not need a conditional use permit if you are a C-1 residential than you are going to be looked at as an R-1, even though you're in a C-1 zone.

Commissioner McMurray mentioned he could if it was residential; this does apply to residential because I could have conditional use. After all, it's residential, right? Chairman Fryar commented if you have just a business on commercial, you don't have to have a conditional use permit. Commissioner McMurray mentioned that's always best, but if it was the same thing with agriculture, but if it's residential, then it's 10-foot conditional use; the same thing should apply to C-1, C-2, and C-3; if it's residential, then it's 10-foot conditional use. Secretary Haderlie questioned whether all sizes are allowed on commercial properties. Vice-Chairman Lau stated that 20 ft. or less is permitted; bigger than that requires conditional use. Chairman Fryar mentioned 20 feet allowed, and larger was conditional use permit. Commissioner Guedes

commented using a commercial zone as residential, you will be held to the residential standards.

Vice-Chairman Lau moved to dispense with reading the June 14, 2022 minutes. She motioned to approve the minutes with corrections, and for Commercial Use-20 ft or less allowed/larger than 20 ft, requires a conditional use permit. Commissioner Guedes seconded the motion. All in favor, the motion carried.

6:10 PM Vice-Chairman Fryar opened the public hearing to consider the application of Fredrick Mark & Kerri Lynn Balls, who are requesting approval of variance into the twenty-foot (20') side yard setback requirement. The variance would allow a detached garage within the setback to be constructed and encroaching six feet (6') into the side setback for 310 North 2nd East, Soda Springs, Caribou County, Idaho. Chairman Fryar questioned if any comments were received. Secretary Haderlie stated there were no comments submitted or received.

(See attached copy of Public Notice)

Chairman Fryar encouraged Mr. Balls of 310 North 2nd East to explain the request. Fredrick Marks Balls stated thank you for reviewing our request. He explained that they are trying to build an unattached garage and would like to do it where it architecturally blends into existing lines. He mentioned if you push the garage further back on the lot, it ruins the view out the kitchen window; we can see rabbit hill, and it would potentially ruin the view out the back and where the potential garage sets are one foot behind the existing garage that was grandfathered in because it is already in the current setback. He mentioned they are trying to do something architecturally and in good taste and the best option for it. He commented this is the home he grew up in, and it's a family treasure, and he doesn't want to mess it up. Chairman Fryar questioned where the driveway access would be. Mr. Balls explained it would be on 3rd North. Commissioner McMurray asked if it would go where the current tree exists. Mr. Balls explained yes, it would be built where the current tree is. Commissioner McMurray asked about the current garage, trees, and backyard placement. Mr. Balls explained they have a garden plot and are 20 feet off the back setback. City Planner/Engineer explained on a regular lot, the setback is five feet, and because it's on a corner, it's 20 feet. Commissioner Guedes questioned the West side, which is the side facing Third North, will look like a continuation of your existing garage. Mrs. Balls explained there would be a breezeway between the two garages. Mr. Balls mentioned it would set back one foot from the current garage and stay there parallel.

Commissioner Guthmiller read the code aloud-“The planning commission shall consider variances to the terms of this title which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this title will result in unnecessary hardship and under such conditions that the spirit of this title shall be observed and substantial justice done. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. In acting upon such variance, the planning commission shall make a full investigation and shall only recommend granting a variance upon finding that the following are

true: A. That the granting of the variance will not be in conflict with the spirit and intent of the comprehensive general plan for the city, and will not affect a change in zoning; B. That there are exceptional or extraordinary circumstances or conditions, applicable to the property involved, or the unintended use thereof, which do not apply generally to the property or class of use in the district, so that a denial of the relief sought will result in: 1. Undue loss in value of the property, 2. Inability to preserve the property rights of the owner, 3. Undue hardship because of characteristics of the site. C. The granting of such relief will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements of other property owners, or the quiet enjoyment of such property or improvement.” He mentioned that he is unsure if it is any of the following and wondered if Mr. Balls had anything to add to the request. Mr. Balls commented. First, the neighbors support it, and the undue hardship of moving to a different location pushes it farther back in the yard, and if you’re looking out our kitchen window, it would be blocked. He feels it devalues the property architecturally and looks good the way he has designed it; that’s a hardship. He explained they wanted to do something that looked tasteful. Commissioner McMurray questioned whether pushing the garage into the backyard would block the view from the existing kitchen window or block the view for neighbors. Mr. Balls replied it would block his sight but not the neighbors.

Mrs. Balls stated Mr. Balls had spent his whole life in the building construction industry. He is very experienced and has built great sites and incredible homes. Vice-Chairman Lau questioned what year the garage was built. Mr. Balls replied in 1952. Vice-Chairman Lau mentioned it was before the current code was enacted, which is why the current garage does not meet the setback requirements because it predates them. She stated you don't officially get that privilege without coming here. She is more inclined to approve it because the home is already on an established building line on that parcel before the zoning code. City Planner/Engineer Skinner mentioned that the existing garage already sat within the 20 ft. side yard setback and was built before the code. Mr. Balls clarified that the new garage would be back one foot farther than the existing one. The commission discussed right-a-way, setbacks, access, and parking at length and verified the area requirements. Commissioner Guedes questioned who was responsible for the curb and gutter? Mr. Balls stated he would take care of it. Chairman Fryar closed the Public Hearing to the audience.

6:26 PM-Chairman Frayer opened the discussion to the commission. Commissioner Guedes explained the reason you provide a special use permit is essential. With extraordinary circumstances, he feels that home value is an exceptional circumstance, and building a garage that would block a view would decrease the value. Commissioner Guthmiller mentioned building a garage generally increases the value and feels it didn’t meet the undue hardship. Commissioner McMurray expressed his opinion that it does meet the undue hardship. Vice-Chairman Lau is not opposed to it, it predates the code, and she is in favor of it, and it would be built in line with the current garage. Chairman Fryar is in favor because it is in line with the existing structure and preserves the basic line. Chairman Fryar questioned the dimensions of the garage? Mr. Balls stated 23 X 23.

Vice-Chairman Lau motioned to recommend to City Council to approve the variance into the twenty-foot (20') side yard setback requirement and allow a detached garage within

the setback to be constructed and encroach six feet (6') into the side setback as submitted. Commissioner Guedes seconded the motion. All in favor, the motion carried

Troy Nielsen of 470 Spring Creek Drive, in Soda Springs. He stated he has a unique property. His property is partly zoned agriculture and partly zoned residential. He explained when he built his home and had it zoned for animals; he would like to put a shipping container to store some things. He mentioned he bought a new container that matches his house, thinking a 40-foot shipping container could be used for storage. He expressed it would be far away from my neighbors. He inquired what he would need; a variance or conditional use. Chairman Fryar mentioned right now the answer is it's not allowed until the ordinance is approved, and that's what we're working on currently. Mr. Nielsen noted he wants to give you input. Commissioner Guedes voiced he could put in for a temporary six months for residential with the current code. Mr. Nielsen stated he is currently working on building a greenhouse. He mentioned he would like to keep it permanently for his four-wheelers and other things scattered in his yard, and he does not want to put it on the agriculture because he would like to be able to back his truck up to it and if it were placed at the back of his property, he would not be able to access it. He explained Robert Rigby bought his mom's house, and his backyard comes up to his property, and the big field behind him is the power companies below his property. He mentioned he doesn't have any neighbors behind him. The commission discussed at length the property lines on google maps of Mr. Nielsen's property; explained what the commission has been working on for shipping containers. Mr. Nielsen mentioned that he buys goods and has imported about 20 containers a year. He explained they have brought in 20-footers and 40-footers, but 10-foot containers are hard to get and find. He mentioned that 20-foot containers are hard to get also, but not as hard as 10 feet; 40 is a typical size available. He expressed that when the commission creates the ordinance, it'd be nice to have some flexibility for those few properties that might have some options. Vice-Chairman Lau voiced that if we don't change our verbiage, a person like yourself could come in and ask for a variance on the 20-foot containers. We're saying 10 and 20 are conditional use, but the variance could get you to 45 or 40 feet.

City Planner/Engineer Skinner mentioned there has to be a need for variance like a hardship. Vice Chairman Lau asked if residents want 10-foot shipping containers, and it does not say the maximum limit, but if they have to come and talk to us, then we say how big? Chairman Fryar expressed it comes down to the commission's goal from talking to the public and talking amongst ourselves is we want something that looks nice, something that doesn't look like a trash can in the backyards, and the way it looks is one thing, but also the size and shape matters. Commissioner McMurray questioned whether he has the shipping container at his place right now. Mr. Nielsen stated it's in Grace currently, sitting empty, waiting to move. He mentioned he thought the ordinance was in place and wanted to apply for a variance when he bought it. He explained this nice wood floor shipping container doesn't show up very often. Commissioner McMurray questioned the odds of doing a six-month permit and putting it on his property. He mentioned having an idea to make a better decision based on something you'd see. Chairman Fryar expressed his opinion it wouldn't set good precedents having them bring it in and place it; for example, we'll look at it, and if we don't like will make you move it or take it

out. Commissioner Guedes mentioned we have set up for automatic conditional use permit, and there's the mechanism of having a variance. He said we should stick with what we got. Chairman Fryar stated that for a variance, you have a good reason for it's either hardship or something else. He expressed his only concern with the variance; we're trying to tighten up on variances and only giving them when needed, not just saying I need a bigger garage, which is not necessarily a hardship. Vice-Chairman Lau stated that if you want to do something different than what the code says, whether it's setbacks or what you wish to do, you come and ask for a variance. Attorney Haney voiced it's either an area variance, which would deal with setbacks, or a use variance, a conditional use process to get something that's not usually allowed. City Planner/Engineer Skinner stated six months is permitted temporarily in residential for construction sites, natural disaster recovery, and cleanup efforts short term, temporary storage for residential or business remodeling. Mr. Nielsen said he is building a greenhouse or converting his shed to a greenhouse. Commissioner McMurray expressed he would like to see what the shipping container looks like before he says okay and likes the idea of temporary placement.

The commission discussed at length the pros and cons of six-month placement, the cost of transporting, placement and removal, enforcing removals, and what shipping containers look like. New verses used and beat up, the durability of shipping containers, providing for rare exceptions, meeting setbacks and area requirements, the unique qualities of Mr. Nielsen's split zoned property of residential and agriculture, the primary use of property, staying consistent, variance hardship's and what they could be and using conditional use permit and variance if residents want more than what is allowed. In conclusion, Commissioner McMurray discussed removing the caps on how big shipping containers are. Vice-Chairman Lau voiced she was for any residential use, 10 feet allowed, and come and apply for something bigger, different, or more. Chairman Fryar stated he is not saying we should get rid of 40-foot shipping containers; if we say three mechanisms to do this, and this and this, where can we do just one instead? Commissioner McMurray voiced that if Mr. Nielsen can do it on his property, it makes sense to me, but it doesn't make sense on my property. Vice-Chairman Lau commented on the other reason yet; she thinks we should potentially remove the caps; if this was any other construction material, if you could fit one in your backyard, with the setbacks, the area requirements; you could build a stick-built accessory building, and nobody could stop you. Chairman Fryar stated that if you apply for a conditional use permit more than 10 feet, your neighbors could come in and say, " Yeah, we'd love the 40-footer, and everybody else does, too.

Commissioner McMurray motioned to remove the caps on all residential. He clarified that we have a 10-foot and some 20 feet. Those will stay the same, but it's the cap limit on all the residential.

Chairman Fryar stated all the commercials don't have a limit. Vice-Chairman Lau mentioned commercials have a 20-foot limit. Commissioner McMurray said that's given, but then they go up to. Chairman Fryar noted removing that, and then we'd have the commercials at 20 feet; anything more would be a conditional use permit. He questioned if we are keeping it the same if it's used as residential. He mentioned that anything more than 10 feet residents would come in to apply for conditional use. Commissioner McMurray clarified all that is being removed is the caps, and everything else stays the same. Ten feet guaranteed, up to 20

conditional uses, all the "up to's" are gone, that removes the cap, commercial is 20 foot and even M-1 & M-2 as well as A-1 & A-2, if there's no residence, there was no cap on those zones. If there's a residential, it's 10-foot or conditional use with no cap.

Secretary Haderlie clarified that 10 feet are allowed, but anything above 10 feet has to have a conditional use for residential. Commissioner McMurray mentioned commercial is 20 feet; the residential cap goes over those if it's not used for residential use. He commented commercial has 20-foot guaranteed anything above that conditional use; we don't have a cap there; we don't have a cap on anything then except for residential use; that's all we're removing, is the cap on residential. He commented that residential use would be a 10-foot guarantee; anything above that is conditional use without a cap. Commissioner Guedes clarified undue hardship because of the site's characteristics; limiting Mr. Nielsen to 20 feet is an undue hardship; looking at somebody who has a quarter acre, I would say, characteristics don't support that. Commissioner McMurray commented he likes it as long as it stays the same, and if the variance allows for this, he is okay with that. Commissioner Guedes questioned can we look at that and say, you have an R-1 that's five acres that says, this is an undue hardship? Commissioner Guthmiller mentioned we must consider the public interest 30 years from now.

Chairman Fryar questioned how we would view undue hardship ten years from now. Attorney Haney pointed out that ten years ago, shipping containers weren't allowed; they considered the issue and said, "No." So here we are ten years in the future, and we're considering allowing shipping containers. Vice-Chairman Lau mentioned we're trying to decide whether any residential use is a residential, commercial, or agriculture zone- 10 feet would be allowed; bigger than 10 feet would be conditional use. The other possibility is any residential anywhere 10 feet permitted and up to 20-foot use conditional use; 20 feet is a conditional use, and bigger than that, you get a variance. Those are the two things we are trying to decide. The commission discussed at length what the conditional use would be used for and if it would stay with the property.

Chairman Fryar commented he dislikes having to do a conditional use and a variance. Commissioner Guedes mentioned let's take this scenario that's before us right now, and we're not deciding anything today. He stated Mr. Nielsen wants to put a 40-foot shipping container on his property, with option two, and he wants to put a 40-foot, he would have to do both a conditional use and a variance. City Attorney Haney stated yes. Commissioner Guedes questioned if he could justify doing both, or can you issue the variance; why does he need a conditional use permit also? Attorney Haney mentioned you know you treat variances, like some different panel, as either an area variance or it is a use variance. He explained it could be a conditional use request, and you wouldn't have to do both. The commission discussed at length wording for a better understanding of the amendment, conditional use and variances with public input, and allowed uses require a building permit/zoning permit. Commissioner McMurray pointed out it boils down to do we want to require a conditional use or variance. Chairman Fryar voiced his concern that both seem like we're mucking it up.

Commissioner McMurray moved to remove all caps on residential use only-10-foot allowed use larger than 10 feet must have a conditional use permit. Vice-Chairman Lau seconded the motion. The motion carried with three in favor and two against by a vote.

Vice-Chairman Lau mentioned ordinance 683, the last paragraph of page five states any shipping container illegally placed upon property in the city at the time of adoption as article, which does not conform to the record for purposes or article shall be required to meet the requirements within 120 days. She is concerned about what we are going to do with the ones that were placed illegally. City Planner/Engineer Skinner said they would have to have a conditional use hearing for those already set unlawfully. The commission discussed at length grandfathering current shipping containers that were placed illegally, and that would not work; the code is not being enforced and has been illegal since 1978; public input from neighbors, conditional use permits, 120 day grace period to get into compliance, public hearing cost and considerations, property ownership when sold and who is responsible because it was placed before the new owners, debated about the cost for those being set illegally, and one public hearing notice per parcel or property owner. Commissioner Guedes recommended tabling the discussion until the next meeting.

Vice-Chairman Lau wondered about writing it for 120 days, and if you've got existing, you come in and obtain a zoning permit, and you pay the fee that pays for the building inspector to make sure you are not on an easement; but you'll have 120 days or however many days to come in and get that done. She mentioned if they don't do it, then they start over. She pointed out another issue to consider 17.44.030. M-1 conditional uses and F. shipping containers are not allowed anywhere; we'll need to ensure we cover that. Chairman Fryar commented we're not going to finish this tonight; we're going to have them rewrite and make sure we've made changes. He hopes we've come up with a consensus on the size, conditional use, and all this other stuff. He mentioned the commission needs to decide what to do with illegal placements and the transition phase. The commission discussed it briefly with no resolution.

Commissioner Guedes inquired whether we want to be consistent with the IBC; do we want to change all of our verbiages to intermodal shipping containers? City Planner/Engineer Skinner mentioned if you're going to look at the handout he gave out before the next meeting, he recommended starting on page two, and you'll see section three are all shipping containers; it's the 2021 IBC code.

Chairman Fryar commented we need to have the code written up, and we can approve it and be done. He stated that's the last hurdle. Attorney Haney mentioned he is thinking of adding shipping containers to the accessory building code when he writes up the amendment.

8:00 PM Commissioner McMurray motioned to adjourn the meeting. Commissioner Guthmiller seconded the motion. All in favor, motion carried.