

Minutes of the Regular Meeting of the Lava Planning and Zoning Commission held Tuesday, March 23, 2010, 6:30 p.m. at Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho

Present: Dave Sanders – Chair Trish Avery – Secretary  
Fred Hinz  
Nick Nelson  
Cory Unsworth

Guests: Steve Beazer, Willow Williams, Rob Anderson, Henry Etcheverry, Kathy Etcheverry, and Mitch Bonbrake

The meeting was called to order at 6:30 p.m.

**Approve minutes – February 23, 2010**

A motion was made by Fred Hinz and seconded by Cory Unsworth to approve the minutes of February 23, 2010. All voted aye, unanimous.

**Statement of Facts, Findings and Recommendations - Parking Variance – 155 East Main Applicant: Sam Netuschil**

Rob Anderson asked what this agenda item was about. Trish explained that the commission needs to approve the Statement of Facts, Findings and Recommendation on the parking variance requested by Sam Netuschil for his property at 155 East Main. The public hearing was held on February 23, 2010 and a recommendation was made to approve the parking variance. A motion needed to be made to approve the statement of facts, findings and recommendation as written.

Fred Hinz noted one typographical error on page 2; Recommendations 1c the word “were” should be changed to “where”.

A motion was made by Fred Hinz and seconded by Nick Nelson to approve the Statement of Facts, Findings and Recommendations with the correction. All voted aye, unanimous.

**Public Hearing - Variance – storage container on vacant lot - Applicants - Henry & Kathy Etcheverry**

Dave Sanders opened the public hearing.

Henry Etcheverry explained that in November 2009 he had placed a storage container on his property in the buck pasture (block 10 of the High School Park Addition). He didn't think that he would be hassled about it. Since then there has been problems. He stated that he has rented it and now owns the property for about several years, it is Ag “grandfathered” in. There used to be a house on the property. The house was old and inadequate to modify into a dwelling so it was torn down. Since that time they have put a pad and cover over a trailer which his foreman stays in. This is the headquarters for their sheep operation. He thought that this container would be good to put salt and equipment in so he purchased one and put it on the property thinking that it was no big deal and

since that time it has become a big deal. He plans to paint the container and make it look nice. He will be in compliance with all the setbacks.

Dave Sanders read the written comments as follows:

“March 15, 2010

To Whom It May Concern:

My sister, Terri Bingham, and I have received a copy of the letter from Henry and Kathy Etcheverry regarding their plans to place a storage unit on their property. We own Lots 23-29 in Block 12 of the High School Park Addition.

We do not have any problem with the Etcheverrys placing the storage container on their property, as long as access and all easements to the container are on their property and do not require access to any of our parcels.

Thank you for the notification. Please let us know if you have any other questions.

Sincerely,  
Tracie Cayford Cudworth  
10222 S. Whispering Sands Dr.  
South Jordan, UT 84095”

“Patrick Eugene Clays  
1009 Park  
Kemmerer, Wyoming 83101  
307-877-4749

March 15, 2010

TO: Lava Hot Springs Planning & Zoning Commission  
Lava Hot Springs City Council Members  
Lava Hot Springs, Idaho 83246

Greetings,

A certified letter arrived at my home on March 12, 2010. This certified letter is dated February 8, 2010. Apparently, Henry and Kathy Etcheverry would like to place a large storage container onto their property that will act to reduce my property values.

The Etcheverry property is located at lots 1, 2, 3, and 4 in block 10 of the High School Park addition in Lava Hot Springs, Idaho while my property is located in the same section at lots numbers 13 and 14.

In the near future, I plan to use my property in compliance with all city codes. The Etcheverry property already contains an unauthorized travel trailer that I consider a nuisance and eyesore. I am **strongly opposed** to the Etcheverry plans to expand their makeshift storage situation.

Sincerely,

Patrick Eugene Clays

Owner: Lots 13 and 14, Block 10, HSP division in Lava Hot Springs, Idaho 83246”

Rob Anderson questioned where Mr. Clays property is in comparison to where Mr. Etcheverry’s property. Trish showed the commission and the audience where the properties are located and reported that there are several other individuals that own lots within the “buck pasture”.

Henry Etcheverry stated that along with the lots which he owns in block 10 he also owns all of block 8 of High School Park Addition which he purchased as a buffer zone to protect his agricultural use.

Steve Beazer stated that he had not come to the meeting prepared to give a statement but after listening to Mr. Etcheverry’s request he would be in support of him being allowed to place the storage unit on the property.

Willow Williams had no comment.

Robert Anderson stated that Henry Etcheverry is his neighbor. He is totally in support of Mr. Etcheverry being able to place the container on his lots. He asked where the survey markers are on the road to determine where the container should be placed. He said that he would prefer the storage container over a “bully barn” or a metal shed. The container is better built. He is totally in support of what Mr. Etcheverry is doing.

Mitch Bonbrake stated that Mr. Etcheverry is doing fine with his property.

Nick Nelson stated that he has no problem with Mr. Etcheverry placing the container on his property. Until neighboring property owner is made to move his shed, he has no problem.

Dave Sanders closed the public hearing.

**Recommendation to City Council - Variance – storage container on vacant lot – Applicants - Henry & Kathy Etcheverry**

A motion was made by Nick Nelson to grant the variance for a storage container on a vacant lot, applicants Henry and Kathy Etcheverry.

Dave Sanders read a portion of the letter from the city's attorney starting page 2 with the definition of a variance and variance procedure as stated in the Lava Hot Springs City Zoning Ordinance Section 3, Chapter V as follows:

“VARIANCE. A variance is a modification of the requirements of this Ordinance as to lot size, lot coverage, width, depth, front yard, rear yard, side yard, set-backs, parking space, height of buildings or other Ordinance provisions affecting the size or shape of a structure or the size of lots. A variance shall, not be considered a right or special privilege, but may be granted to an applicant only upon the showing of undue hardship because of characteristics of the site and that the variance is, not in conflict with the public interest.

### SECTION 3: Variance Procedure:

#### 1. The Following Provisions Shall Apply in Considering Variances:

a. The City shall consider variances to the terms of this Ordinance which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship and under such conditions that the spirit of the Ordinance shall be observed and substantial justice done. In acting upon such variance the City Council shall make a full investigation and shall hold a public hearing, as herein specified and shall only grant a variance upon finding that the following are true:

(1) That the granting of the variance will not be in conflict with the spirit and intent of the Comprehensive Plan for the City, and will not effect a change in zoning;

(2) That there are exceptional or extraordinary circumstances or conditions, applicable to the property involved, or the intended 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:

(a) Undue loss in value of the property;

(b) Inability to preserve the property rights of the owner;

(c) The prevention of reasonable enjoyment, of any property right of the owner;

It is clear that the variance procedure cannot be used where the variance would conflict with your Zoning Ordinance. The Zoning Ordinance permits accessory buildings only when there is a dwelling home (or other primary structure such as a school or church) located upon the property. The accessory building is an accessory to the main building located on the property. As there is no home located on the property, your zone does not permit accessory buildings, such as

storage buildings, to be placed upon property within that zone. A variance to your Zoning Ordinance can only be granted where it affects the lot size, lot coverage, set backs, size of yards, heights of buildings, or other provisions affecting the size or shape of a structure or the placement of the structure upon a lot. Furthermore, a variance can only be granted where the applicant shows undue hardship because of characteristics of the site. As your Zoning Ordinance does not permit accessory uses upon properties where there is no home located thereon, there is no hardship to the applicant that is not applicable to all other property owners within the City. Furthermore, the granting of a variance would violate the provisions of Chapter 5, Section 3, in that the granting of the variance would cause a change in zoning in that you would be allowing accessory buildings or uses upon properties where there is no primary building or structure.

It is also my understanding that the applicants may consider the erection of an accessory building upon their property for storage purposes to be “grandfathered”. “Grandfathered” uses are address by Section 7, Chapter 3, of the Zoning Ordinance. It is obvious at the time of erection of the storage structure by Mr. and Mrs. Etcheverry, that there was no such existing use upon the property. Subsection 6, Section 7, Chapter 3, makes clear that a nonconforming use cannot be placed upon property after a nonconforming use has been discontinued for a period of one year. That section further makes clear that the erection or restoration of a building upon property thereafter, must be in conformity with the zoning ordinance. It must be a conforming use, which it is not.”

Dave Sanders stated that the commission has other things to consider such as the setting of precedence.

Kathy Etcheverry stated that their attorney explained to them that because they have an ongoing sheep business which they are trying to continue and replace the storage, it is a hardship. Presently they are storing their salt and equipment in her mother-in-law’s garage. They didn’t know that there would be a problem when they took down the old house, they would have replaced it with a storage unit at that time.

Henry Etcheverry stated that there used to be a septic tank on the property. Currently there is no sewer or water service to the property and the road is not improved. He said common sense should tell them that a variance is specific to each situation. They are asking to place a storage container in their buck pasture. He didn’t know about the 1 year restriction to the “grandfather” clause. The house was built around a log cabin and was full of pack rats. There was a time laps of about 4 or 5 years. He had to get a criminal attorney because of the citation.

Michael Atkins stated that he thought that Mr. and Mrs. Etcheverry should have had 5 years to replace the storage on the property. He said that he thought that the statue of limitations is 5 years. He questioned why the city ordinance has a 1 year restriction instead of allowing 5 years.

Dave Sanders explained that the limitation for establishing a prescriptive easement is 5 years. He is not sure why the difference.

Fred Hinz stated that he has no personal problem with the variance but the commission had received advice for the city's attorney on the variance and the commission has to follow the city ordinance and the attorney's advice as to the interpretation of the ordinance.

Trish Avery reported that the variance procedure is also in the Idaho State Code Section 67-6516. This state code is the same as the city code on variance procedure.

Dave Sanders questioned what zone Mr. Etcheverry's property and Mr. Clays property is located. Trish stated that where the storage container is located is R2 and Mr. Clays' property is in R3. R3 is residential which allows higher density residential and some light commercial such as some office, bed and breakfast, day care, etc.

Mr. Etcheverry stated that his attorney and the prosecuting attorney had told them to go this route of requesting a variance.

The motion failed for lack of a second.

A motion was made by Dave Sanders to seek farther direction from the attorney regarding the difference of the time limitations to replace a non-conforming use.

Rob Anderson stated that the city attorney is giving his opinion, which is the way he is interpreting what he has read. He thinks that the commission should go with Mr. Etcheverry and should give him the variance because if they go with the city attorney's opinion they will get themselves into a bucket of worms that the city doesn't want to get into.

Dave Sanders stated that the commission has to follow what the city's legal council has given them.

The motion was seconded by Fred Hinz All voted aye, unanimous.

The commission questioned if there would need to be another public hearing. Trish explained that there would not need to be another public hearing, but the commission would need to meet within 30 days to make a final recommendation on this variance request.

Mr. and Mrs. Etcheverry left the meeting.

**Public Hearing - Building Lot Variance – Lots 1 & 2 - Corner of Merle and 1st West  
Applicant – Michael Atkins**

Dave Sanders opened the public hearing on the building lot variance – Lots 1 & 2 – Corner of Merle and 1<sup>st</sup> West, applicant Michael Atkins.

Michael Atkins stated that his notification letter stated his position. He referred to questions from a letter which he had received Dale and Linda McFarland. He stated that the home will be built on what will be the corner of Merle and 1<sup>st</sup> West. He will meet all set back requirements. The home will be used as a vacation home for personal use. He will access the home from Merle which has a 60 foot frontage; First West south of Merle is undeveloped so access from Merle is the most logical.

Steve Beazer commented on the occupancy of the home and that the notification letter indicated that the home will be occupied periodically. He has no problem with the home being used periodically because that is a lot of what the city has evolved into. He stated that areas with absentee home owners tend to become higher crime areas. He has concerns about granting this variance because this could lead to the area becoming a high crime area. The city ordinance was written to require that building lots on a corner have 3 lots for a reason. We need to be careful when granting a variance. He is concerned that if Mr. Atkins is allowed to build on this small lot he may try to squeeze 5 homes on the upper half block. He questioned if granting this variance will enhance the neighborhood. He stated that he is not in favor of squeezing a home on a small lot.

Michael Atkins stated that there are no other adjoining lots which could be bought. Because there is an alley between the 2 lots in question and his upper 10 lots, therefore he cannot join them to any of his other lots. If no development is done on the lots there will be a weed problem. He stated that he understands that he will need to have someone take care of the property. He stated that he purchased the south half of the block along with lots 1 & 2 because the owner would not separate them. He said that he has no intention to develop the south half of the block at this time. He said that if he were to develop the upper half of the block it would be developed according to city ordinance.

Willow Williams stated that there are 2 lots on the other side of what is platted as First West Street. First West has never been constructed so there is nothing to prove that there will be a street put in. There would be fewer problems with a variance if the entrance was towards First West. The only permanent residents on the street are herself and Mitch Bonbrake. She asked how the property can be sold when the street is not there.

Michael Atkins addressed the entrance to the home. Because Merle Street is constructed and the utilities are in place it is less expensive to have the home entrance come off Merle.

Willow Williams said that each year she mows her property and the property owners around her only mow once a year usually in late summer. This is another concern.

Rob Anderson questioned if this section of First Street will ever be developed.

Trish Avery explained that by law it is the developer's responsibility to develop the streets. When the streets are up to city specifications the city will take the street maintenance over. The street is plotted and planned by the street will not be put in until the land owner/developer puts it in.

Rob Anderson stated that placing a home on this site and other two lot corners in the city would be an asset to the city and would take care of some of the other problems like weeds.

Willow Williams asked who is responsible to take care of the street property until the street is developed. Trish explained that the street is the city's property and the city will take care of the weeds. The process of vacating a street was also explained.

Mitch Bonbrake stated that he didn't think that it was fair to grant the variance because he was not given the same opportunity when he purchased his lots. He said that he could have purchased the two lots on the corner for less than the 2 lots that he purchased in the middle of the block.

Willow Williams stated that it is not fair for the city to grant one person a variance and not the other. She said that the people from the city come in with more money than those who live here and it is not fair for the city to grant a variance to one and not to another.

Nick Nelson questioned if Mr. Atkins could connect lots 1 and 2 with the lots across the alley because it is not a developed alley.

Trish explained that the alley is not developed but it is a plotted alley and would have to be vacated in order to connect the lots. She also explained that Mr. Atkins plot plan will meet the setback requirements and the not more than 45% lot coverage requirement, the only requirement that he cannot meet is the square footage for a corner lot. That is what the variance application is for. She also explained that in order to develop the south half of the block all city services would need to be installed which is the developer's responsibility.

The written comment which Mr. Atkins had received from Dale and Linda McFarland was not read into record because it had not been received at city hall before the March 22, 2010 deadline.

Dave Sanders read the written comment as follows:

To the City:

We have no objection to Mr. Atkins building a home on the property he owns.

Sincerely,  
Janice K. Hawes  
Verl J. Hawes

Dave Sanders closed the public hearing.

**Recommendation to City Council - Building Lot Variance – Lots 1 & 2 - Corner of Merle and 1st West - Applicant – Michael Atkins**

Trish told the commission that this variance application falls into the qualifications of what the ordinance allows a variance to be granted on because it is a variance on lot size. Therefore by ordinance the commission can recommend the granting of this variance if they choose to.

Nick Nelson asked Mr. Atkins what his development plans are for lots 10 – 20.

Mr. Atkins stated that he has no plans to develop at this point.

Cory Unsworth stated that future development of the remainder of the block should not be considered because the future can change.

Fred Hinz stated that he would like to see the 2 lot corners used.

A motion was made by Fred Hinz and seconded by Dave Sanders to recommend that the variance be granted based on the facts that Mr. Atkins can meet all the setback requirements and lot coverage requirements. All voted aye, unanimous.

Trish reviewed the process of the Statement of Facts, Finds, and Recommendation to be approved within 30 days of the public hearing. The recommendation will then go to the city council to act on at their May meeting.

**Zoning Ordinance Amendments**

**a) Alternative Power (Wind/Solar Power) – ordinance amendment**

A motion was made by Dave Sanders and seconded by Fred Hinz to amend the zoning ordinance to include solar power as a permitted use. All voted aye unanimous.

It was discussed that there would need to have some regulations placed on solar power. The commission members will study farther the issue and will continue to work on amendments to solar power regulations until the commission feels that they are ready to send it to the attorney to be written.

Some discussion followed regarding the public hearings that were held earlier in the meeting. Fred Hinz stated that the city cannot go against our own ordinance. Nick Nelson asked why the city had allowed the yurt and shed on Milan Zabka's property to remain on the property. Trish reported that the city had been advised that they had let the shed and yurt sit on the property too long and they could do nothing about it. The county building officials has no proof of the "red tag" that was placed on the yurt several years earlier. The city has disconnected the plumbing from the yurt and shed.

She stated that the applicants had been given bad advice by the prosecuting attorney because the variance regulations are State code.

Trish reported that the code enforcement officer, R.B. Scott, had visited Mr. Etcheverry when he first started to build the pad for the storage container to sit on. The code enforcement officer told Mr. Etcheverry that the ordinance didn't allow him to put an accessory use on his property without a primary building (house, school, etc). The storage container is an accessory use and cannot be place on the property. Mr. Etcheverry went ahead and placed the storage container on the property anyway. Fred Hinz held up the code enforcement officer's report and said that is why the commission received this report. He said that the attorney told the commission that the city ordinance doesn't allow an accessory use without a primary building so the commission could not grant the variance.

Nick Nelson asked why the trailer had been allowed to be placed on the property. Trish reported that the trailer had been there too long. She reported that Councilman Beeson had also told Mr. Etcheverry not to place the storage container on the property but to go through the process and maybe the city would work with him. Mr. Etcheverry would not have had to hire an attorney if he would have gone about it in the right way. The city could have told him to go for a zoning change or an ordinance amendment to allow an accessory use on an undeveloped lot. But he chose to put the container on the property anyway. Trish clarified that Mr. Etcheverry does not own the whole "buck pasture"; it is plotted out into separate lots which are owned by several different individuals. Mr. Etcheverry owns the north half of block 10 and all of block 8.

**b) RV on Developed Lots – ordinance amendment**

Trish reported that she had not yet received anything from the attorney on this. She will try to push for this so that it can be taken care of before the summer tourist season begins.

**Comprehensive Plan Report**

Trish reported that the comprehensive plan committee is continuing to work through the chapters and are working towards having a rough draft by June. The committee is meeting every 2 weeks.

**Other Business**

Trish gave the commission a document on the curb and gutter requirements. The commission may want to review this while were making changes to the ordinance.

**Schedule Next Meeting**

A motion was made by Fred Hinz and seconded by Nick Nelson to schedule the next regular meeting on April 20, 2010 at 6:30 p.m. All voted aye, unanimous.

**Adjournment**

A motion was made by Fred Hinz and seconded by Nick Nelson to adjourn. All voted aye, unanimous. The meeting adjourned at 7:55 p.m.

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Trish Avery – Secretary

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Dave Sanders – Chair

Approved 4-20-10