

CASCADE COUNTY
ZONING BOARD OF ADJUSTMENT

3/16/2023

09:00 AM

Hybrid Online/Zoom Online Video Meeting

Board Members: Dexter Busby, David Deffinbaugh, Kathryn Hanning, John Harding, and Ken Thornton.

NOTICE: PURSUANT TO MCA 2-3-212(1), THE OFFICIAL RECORD OF THE MINUTES OF THE MEETING IS IN AUDIO FORM, LOCATED AT CASCADECOUNTYMT.GOV AND THE PLANNING OFFICE. THIS IS A WRITTEN RECORD OF THIS MEETING TO REFLECT ALL THE PROCEEDINGS OF THE BOARD. MCA 7-4-2611 (2)(B). TIMESTAMPS ARE INDICATED IN RED, WITHIN EACH AGENDA ITEM BELOW, AND WILL DIRECT YOU TO THE PRECISE LOCATION SHOULD YOU WISH TO REVIEW THE AUDIO SEGMENT.

THESE MINUTES ARE PARAPHRASED AND REFLECT THE PROCEEDINGS OF THE CASCADE COUNTY ZONING BOARD OF ADJUSTMENTS AND ARE CONSIDERED A DRAFT UNTIL FORMALLY APPROVED BY THE ZONING BOARD OF ADJUSTMENTS.

STAFF ATTENDEES: Kevin Angland, Raina Leavens, Alisha Osborne and Charity Yonker.

PUBLIC ATTENDEES: Zachary Dreher, Saul Gompert, Mark Harant.

1. **CALL TO ORDER:** John Harding called the meeting to order at 09:00 AM [00:00:25].

2. **ROLL CALL:**

BOARD MEMBERS PRESENT: Dexter Busby, David Deffinbaugh, Kathryn Hanning, John Harding, Ken Thornton.

BOARD MEMBERS ABSENT: None.

3. **APPROVAL OF THE MINUTES :**

A. **Draft Meeting Minutes for February 16, 2023.** [00:01:09]

1. **Board Discussion & Decision**

John Harding: Says before you are the minutes for the February 16, 2023 meeting and asks if there are any changes or corrections. Hearing none he calls for a motion.

Kathryn Hanning: Says so moved.

Dexter Busby: Seconds the motion.

John Harding: Calls for the vote.

All in Favor, motion carries 5– 0.

4. **OLD BUSINESS:** None.

5. **NEW BUSINESS:**

A. **Special Use Permit Application #004-2023, Submitted by Zachary Dreher for A Second Dwelling.**
[00:01:37]

1. Raina Leavens presents the Staff Report.

Motions Presented for the Board’s Consideration:

A: Move that Special Use Permit #004-2023 to allow a Second Dwelling on Parcel #2664500 be **denied** due to (ZBOA member proposing denial must delineate legal reason that the application be denied); **or**

B: Move the Board to adopt the Staff Report in its entirety and **approve** Special Use Permit #004-2023 to allow a Second Dwelling on Parcel #2664500 subject to the following conditions:

1. The Applicant obtains any other required county, state, or federal permits and approvals, and complies with the respective laws, rule, regulations and ordinances.
2. Structure will not exceed a height of 50 feet if located in the MOD-B and MOD-E area of the Malmstrom Airforce Base runway Height Military Overlay District.
3. Applicant obtains address for the second dwelling form the GIS department for E911 purposes.

2. Board Discussion [00:06:30]

John Harding: Asks the Board if there are any questions for Staff. Hearing none, he says normally we see a site plan for the second dwelling. He asks if there is not one.

Dexter Busby: Says there are a hundred and sixty-one (161) acres.

John Harding: Says but normally we get a site plan.

Raina Leavens: Says yes, there is a site plan and it is in the application.

John Harding: Says he does not see it for some reason, and he had searched a couple of times.

Kathryn Hanning: Says she does not have one either.

Raina Leavens: Says they got stuck in her own packet, so she will now distribute copies to the Board and apologizes.

John Harding: Says we will mull this over for a moment and asks if there are any questions for Staff. Hearing none we will open the public hearing.

3. Public Hearing opens at [09:08 AM, [00:07:40].

John Harding: Asks if the Applicant wishes to make comments.

Zachary Dreher: Says no, I would not.

Public Proponents: None.

Public Opponents: None.

General Public Comments Regarding Special Use Permit #004-2023: None.

Public Hearing closes at 09:09 AM.

4. Board Discussion & Action: [00:08:47]

Kathryn Hanning: Motions to approve.

David Deffinbaugh: Seconds the motion.

John Harding: Says there is a motion and a second and asks if there is any further discussion. Hearing none, he calls for the vote.

All in Favor, motion carries 5– 0.

B. Special Use Permit # 005-2023, Submitted by Mark & Cortni Harant for A Tourist Home [00:09:58]

1. Kevin England presents the Staff Report.

Motions Presented for the Board's Consideration:

A: Move that Special Use Permits #005-2023 to allow a tourist home on Parcel #1936000 be **denied** due to (*Board must make findings delineating the legal reason for denial*); **or**

B: Move the Board to adopt the Staff Report in its entirety with Findings of Fact and Conclusions and **approve** Special Use Permits #005-2023 to allow a tourist home, on Parcel #1936000, subject to the following conditions:

1. The Applicant obtains any other required county, state, or federal permits and approvals, and comply with the laws, rules, regulations, and/or ordinances associated with any other permits and approvals.
2. The tourist home is to be rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis only (MCA §50-51-102).

2. Board Discussion [00:15:02]

John Harding: Asks if there are any questions for Staff. He says he will have a couple at the end, but we will move to the public hearing portion first.

3. Public Hearing opens at 09:15 AM, [00:15:16].

John Harding: Asks if the applicant wishes to make comments at this time.

Mark Harant of 1506 Central Ave, Great Falls: Says he and his wife Cortni wish to make this a VRBO and that they have two (2) other VRBO properties, one (1) in Whitefish. We do not let anyone under the age of twenty-five (25) in the VRBOs and do not allow parties or activities of that nature. There is off street parking and it is close to restaurants and things, it is easily accessible, and we conduct background checks on renters and do not want vandalism issues.

Public Proponents: None.

Public Opponents: None.

General Public Comments Regarding Special Use Permit #005-2023: None.

Public Hearing closes at 09:17 AM.

4. Board Discussion & Action: [00:17:33]

John Harding: Says he is sorry for the redundancy, but it is a requirement. He says he assume that when the garage was built, there was a mother-in-law suite that was put above it. He asks if the Planning Department Staff have any history on that.

Charity Yonker: Says yes, it was permitted for a shop, and that is all it was permitted for.

John Harding: Says so the mother-in-law suite was not part of it.

Charity Yonker: Affirms.

John Harding: Says that leads to his question on whether we are setting a precedent for allowing these VRBOs on small parcel lots in residential areas such as Black Eagle, for example.

Charity Yonker: Says it is already allowed through the regulations, they cannot have a second dwelling unit/accessory dwelling, but they can have a tourist home.

John Harding: Says that is what he is getting at, is this is an accessory dwelling.

Charity Yonker: Says it is defined differently since it is used on a temporary basis, it is treated differently within the regulations itself. That is why the applicant is doing the tourist home, because he cannot do a second dwelling within the Mixed-Use District.

John Harding: Says he is not sure if his question was clear, but he wants to know if it sets a precedent for people to build these second dwellings, accessory buildings or VRBOs on their lot in Black Eagle. He asks if this is already allowable.

Charity Yonker: Says yes, for the VRBO or tourist home equivalent.

John Harding: Says he is not sure everybody knew that. He asks the Board if they knew that.

Dexter Busby: Says no.

John Harding: Says that is the part he is questioning, so if he were in the city he could convert his garage into a second dwelling. He says he does not know what the city rules are, and this is going on across the country, and he is assuming we will see it more often. This is the first time we are dealing with it here, so there should be some sort of discussion about it and some understanding. We should see what this looks like for future requests.

Ken Thornton: Says we have done tourist homes before.

John Harding: Says but every one we have seen has been on a large parcel. We have not dealt with a city lot size project.

Dexter Busby: Says according to the rules, I could rent this by the week, and rent it to the same person for six (6) months by the week but it would be within the rules.

Charity Yonker: Affirms.

Dexter Busby: Says so it is accomplishing basically nothing. It is a second dwelling.

John Harding: Says that is what he was getting at, is you can cloak a second dwelling as a VRBO or AirBnB easily. It is the second dwelling part we will have to have a little more discussion about to understand. Apparently the neighbors were not in opposition.

Kathryn Hanning: Says no, you have two (2) letters with opposition regarding noise, parking and turnover rate.

John Harding: Says those are the [concerns] I would understand from anyone. We know how the neighbors are often not in favor of anything that would be deemed to be additional development around their own property, so it is very common to have those type of comments, although I did not see those, and I was more concerned about the legality of doing this and what it potentially creates for future requests of the same. This issue will come up again. I was thinking the issue with the mother in law suite was going to be the water and sewer.

Charity Yonker: Asks Mr. Angland if he wants to speak to that.

Kevin Angland: Says yes, if they were plumbed in and hooked up to the city's water, they would have had to get approval from the Health Department the first time, the difference now is that he is required to get approval a tourist home license from the City-County Health Department that would likely address that wastewater issue. It is not anticipated that having the tourist home there would cause more issues with wastewater, especially with being hooked up to Black Eagle Sewer and Water.

Kathryn Hanning: Says so it is hooked up to Black Eagle.

Kevin Angland: Says yes, it is.

Kathryn Hanning: Says but without a permit.

Kevin Angland: Says they obtained approval.

Kathryn Hanning: Says that is good.

Kevin Angland: Says that was from the Location/Conformance Permit from 2018.

Dexter Busby: Says so they got approval in 2018 to do this with water and sewer.

Kevin Angland: Says yes, they would have been hooked up at that time.

Charity Yonker: Says to have a bathroom in the shop.

Kathryn Hanning: Says I see.

John Harding: Asks Ms. Yonker if this presents a problem in the future or sets a precedent for something that has been established already.

Charity Yonker: Says not in her view, because the regulation is already written to allow a tourist home, and not the second dwelling, so it does not allow for a dwelling where someone is living there on a month to month or yearly lease agreement basis. We are not setting any new precedent for what the regulation allows for, it has already been allowed through the Commission accepting those changes when they occur through the regulations. It is a Special Use Permit for exactly this reason, as many of our considerations revolve around minimum lot size requirements or lot coverage requirements, and we are aware that some of the lots are small in the Mixed-Use District, which can differ throughout the county depending on where you are located. This is one that is flagged for us to run calculations to ensure the lot coverage percentage has not been exceeded, as that will trigger stormwater concerns as well as open space and parking issues. We are looking at those things and at setbacks, which are concerns we investigate as we are processing the permits.

Kevin England: Says for stormwater, we did send out the interested agency notice to Kevin May, the MS4 Coordinator, and he had no comments or concerns about this.

John Harding: Says it takes a lot of structure to exceed the lot coverage requirements, and it is a pretty liberal amount.

Kathryn Hanning: Asks how the county keeps track of how long the tourists are there, and if there is a reporting system in place.

Charity Yonker: Says it is complaint driven.

Dexter Busby: Says he thinks they are splitting hairs here, about the difference.

John Harding: Says right.

Charity Yonker: Says that is why the condition is added in there specifying that it is for daily or weekly usage and nothing more, because if that condition is breached a complainant can file a complaint and we can investigate. There are some checks and balances that will require some knowledge coming to us that it is being used outside of what it has been permitted for. They are not always complaint driven, they sometimes come to us from Department of Revenue or self-reports.

Dexter Busby: Says that way they do not need to pay the tax on a temporary resident fee.

Kathryn Hanning: Says "oh".

John Harding: Says he is reasonably satisfied with the answer but knows that if the trends that are occurring in the rest of the country, they will occur here, and I know Gallatin valley has seen a lot of that with a lot of opposition with every scenario.

Charity Yonker: Says we are also expecting a lot of legislative movement on Accessory Dwelling Units (ADUs) and how those are treated. With the legislative sessions, we expect changes to occur that will trigger regulation changes.

John Harding: Says with it on our radar it becomes a bigger decision than sitting on the Board today, it becomes a decision of what the community wants. I have seen this over time where we adjust our zoning regulations to allow or disallow something and the community is going to have to be involved at some point. I am satisfied with what we have talked about. With no other discussion or comment, I would move for a vote [motion].

Dexter Busby: Moves to approve.

Kathryn Hanning: Seconds the motion.

John Harding: Says we have a motion and a second and asks if there is further discussion. Hearing none, he calls for the vote.

All in Favor, motion carries 5– 0.

John Harding: Says to Mr. Harant that he is the guinea pig for us today.

Mark Harant: Says he understands.

John Harding: Says this presents a challenge, some of it comes from California.

Kathryn Hanning: Says one sole survivor.

Multiple Board Members: *[Inaudible]*.

C. Special Use Permit #006-2023, Submitted by Karl Birky for A Second Dwelling [00:30:14]

1. Raina Leavens presents the Staff Report.

Motions Presented for the Board’s Consideration:

A: Move that Special Use Permit #006-2023 to allow a Second Dwelling on Parcel #2022012 be **denied** due to (ZBOA member proposing denial must delineate legal reason that the application be denied); or

B: Move the Board to adopt the Staff Report in its entirety and **approve** Special Use Permit #006-2023 to allow a Second Dwelling on Parcel #2022012 subject to the following conditions:

1. The Applicant obtains any other required county, state, or federal permits and approvals, and complies with the respective laws, rule, regulations, and ordinances.
2. No structure may exceed a height of 500 feet.
3. Applicant obtains addresses for both units from the Planning & GIS Department for E911 purposes.
4. Applicant obtains an approved Subsurface Wastewater Treatment System Permit from the City-County Health Department prior to installation of any wastewater treatment system.

2. Board Discussion [00:34:44]

John Harding: Asks if there are questions for staff. Hearing none, we will open the public hearing.

3. Public Hearing opens at 09:35 AM, [00:34:50].

Saul Gompert of 46 Novak Creek Ln, Cascade: Says he is from Cascade and he represents KIB Homes. He explains that the townhome will match the one that has been built next to it, for a total of two (2), and it is a part of the subdivision that is being built and was designed in 2019 and hope it will meet the housing needs.

Public Proponents: None.

Public Opponents: None.

General Public Comments Regarding Special Use Permit #006-2023: None.

Public Hearing closes at 09:36 AM.

4. Board Discussion & Action: [00:36:32]

John Harding: Asks what the red dots are for [on the Vicinity Map].

Kathryn Hanning: Asks if those are where the wells are.

Raina Leavens: Says they are addresses.

John Harding: Says so those are addresses.

Raina Leavens: Says yes, and I think there is a little line that represents the driveway.

Dexter Busby: Says so if they have a common driveway, the line is not accurate.

Charity Yonker: Says she thinks the driveway is particular to each one.

John Harding: Says he knows this is one of the things we spoke about in the planning process, about when approval is given at the planning level it does not necessarily have to end up here and have the applicant go through this process. Right now this process is required, and this is how it is. Mr. Busby may have some discussion with the Planning [Board] and see if we cannot consolidate this.

Dexter Busby: Says he thinks we talked about this and there is one just down the road from this that they need to put it on the plat.

Kathryn Hanning: Says and it is approved.

John Harding: Says and is it not there and they still have to ask us.

Charity Yonker: Affirms.

John Harding: Says it is there already, it is platted.

Ken Thornton: Says it is because zoning regulations says you can only have two (2) houses on a lot.

John Harding: Says right, so you have to come here and ask, even though the drawings and the plat show a second dwelling and they want some townhomes there.

Ken Thornton: Says as a Planning Board member at that point, it was my fault for that.

Multiple Board Members: *[Inaudible]*.

John Harding: Says we can work with them and maybe try to fix some of this.

Dexter Busby: Says it says so in the regulations.

Kathryn Hanning: Says not that we do not enjoy you hanging out all the time.

John Harding: Asks if there are any other questions or comments from staff.

Kathryn Hanning: Moves to approve.

David Deffinbaugh: Seconds the motion.

John Harding: Says there is a motion and a second and asks if there is further discussion. Hearing none, he calls for the vote.

All in Favor, motion carries 5 – 0.

John Harding: Says he does like the fact that the entire report does not need to be read aloud anymore, as between these three [matters] it would be 10:30 already. We also did not get any more information either, you just look through it yourself.

Ken Thornton: Says anything in the materials, you can bring up for discussion.

John Harding: Says yes.

6. BOARD MATTERS [00:40:06]: None.

7. PUBLIC COMMENTS REGARDING MATTERS WITHIN THE BOARD 'S JURISDICTION [00:40:04]: None.

8. Adjournment at 09:40 AM [00:40:12]

John Harding: Says hearing none, he will take a motion to adjourn.

Dexter Busby: Says so moved.

John Harding: Says we are adjourned.

DRAFT