MINUTES
SNYDERVILLE BASIN PLANNING COMMISSION
REGULAR MEETING
TUESDAY, MARCH 10, 2020
Sheldon Richins Building
1885 West Ute Boulevard
Park City, UT

COMMISSIONERS PRESENT:
Malena Stevens, Chair
Thomas Cooke
Ryan Dickey
Joel Fine

Canice Harte
John Kucera
Crystal Simons

STAFF PRESENT:
Peter Barnes– Planning & Zoning Administrator
Ray Milliner– Principal Planner
Patrick Putt– Community Development Director

Tiffanie Northrup-Robinson– Senior Planner
Jami Brackin– County Attorney
Kathy Lewis– Secretary

The meeting was called to order at 4:30 PM.

REGULAR SESSION

1. General Public Input

The public hearing was opened. No comments were made and the public hearing was closed.

2. Public hearing and possible action regarding the Conditional Use Permit for the Mountain Life Church Expansion and Parking Lot; Parcels SS-33-B-2; Dave Morse, Applicant– Tiffanie Northrup-Robinson, Senior Planner

Planner Northrup-Robinson said this application is for an expansion of Mountain Life Church and the addition of a parking lot. A previous public hearing was held on February 11, 2020. At that time, a lot of public comment was received. Many, but not all, of the comments were in favor of the expansion.
At that meeting, there were some outstanding issues. The applicant was asked to work with Staff in reaching a resolution. Some of the concerns were about engineering items such as storm drains. Another outstanding item was the expanded parking lot plans.

Included in the packet is an updated memo from Brandon Brady who is an engineer with the Engineering Department Staff. He felt comfortable with the application moving forward. The applicant will be able to meet all of the requirements.

Planner Northrup-Robinson said the snow storage plan has been updated. Additionally, at the last meeting, a request was made for the applicant to enhance or add additional landscaping. It was decided that increasing the amount of native species would be more beneficial than other discussed considerations.

Planner Northrup-Robinson said the applicant has proposed to install different lighting zones. Each zone can be turned on or off as needed. The expanded parking lot will used on a limited basis, mostly during daylight hours when lighting will not be necessary. Different zones for lighting will help control the lights.

A request at the public hearing was for the church expansion and the possible school be processed at the same time. Planner Northrup-Robinson said at this time, the school is not part of the application. It may or may not be considered in the future. They two projects are not tied together.

A suggestion was made that shrub willows be planted along the road. This was to decrease the visual and lighting impacts. Special Service District #3 has requested that no foliage be planted along the road. Planner Northrup-Robinson noted there is significant vegetation around the parking lot.
The following items were agreed to by the applicant:

- Working hours from 7 a.m. to 7 p.m.
- Adequate dust control
- Clean up of construction materials from roads

These items were addressed as part of the construction mitigation plan. The County has specific guidelines for construction standards.

- Because of Sunday morning services, it is difficult to restrict snow removal to daylight hours; however, snow removal is part of the noise ordinance. It will be held to the same standards as found throughout the Basin.

Planner Northrup-Robinson said that Staff recommends the Planning Commission take into consideration the comments given at the public hearing, along with Staff’s analysis found in the Staff Report, and approve the Mountain Live Church expansion and parking lot as outlined in the Staff Report.

**COMMISSION COMMENTS AND QUESTIONS**

**Commissioner Simons** said adding bioswales to the parking lot helps to mitigate her concerns for the wetland habitat. She appreciates the applicant’s thoughtfulness in adding this feature.

**Commissioner Cooke** said his issue is the size of the parking lot and the impact it will have to the surrounding wetlands. He is uneasy about how this land is being used. This will be a large parking lot in the middle of wetlands. At the last meeting, he requested to have a calculation of the wetland versus the upland percentage. Planner Northrup-Robinson showed the site plan and the location of the designated wetlands.
Commissioner Harte said his comments are also about the parking lot. What is allowed on the land? Planner Northrup-Robinson said the parcel is zoned rural residential. It was not a part of the Development Agreement. She said that a parking lot is a conditional permit in the RR zone. A traffic study was completed. It suggested having more parking than what is being proposed. Commissioner Harte asked if there is a standard of what percentage of that land can or cannot be used for development or parking. Planner Northrup-Robinson said the traffic study comes into play when this determination is made.

Commissioner Fine asked if any changes have been made to the planned structure since the last meeting. Planner Northrup-Robinson said no changes have been made to the proposed structure. Changes were made to the landscaping plan. At the previous meeting, Commissioner Simons asked if the sidewalk along the back of the parking lot could be changed to be a soft surface. After review, the County Engineer said he is comfortable with that. Planner Northrup-Robinson said in addition, the snow storage has been moved back so that it will not impact the wetlands.

Commissioner Fine asked if the County Engineer agrees with the applicant’s traffic study. Planner Northrup-Robinson said the traffic study was reviewed by the Engineering Department. It was determined the findings were sound.

Commissioner Dickey said he likes the inclusion of zoned lighting in the parking lot. He still has some uneasiness about the lighting, taking into account the size of the lot. This is of particular concern if a future owner decides to have the lights on every night of the week. It seems that there should be a reasonable mitigation. Perhaps there could be a number of nights when the lights could be on. He made the suggestion of no more than two nights per week, or three nights a month.
Wade Budge, representing Mountain Life Church, said they like the approach the Staff took in crafting the conditions. They want to make sure the use of the parking lot is tied to the events at the church. He quoted condition #12. It states the lighting of the parking lot will be associated with the events at the church in the hours after sundown. If there is any a desire to use this for a non-church use, a special permit would be required. During that process, the lighting would be addressed.

Mr. Budge said that limiting the number of days is difficult because they don’t have a forecast of how the church is going to be used. There may be a month where they would need an unusual number of meetings. They don’t want to be in the position that an amendment would be needed.

**Commissioner Dickey** asked if there is any number over a certain period of time that would seem reasonable. Mr. Budge said there probably would be, but they haven’t done an analysis of what that number would be. He doesn’t think they should be putting an extra burden on a church by giving a number that isn’t given in the Code. If the parking lot is being used on a consistent basis for other uses, that would be inconsistent with their application. **Commissioner Dickey** said the language may need refining. He suggested the language states “church events”, not “events at the church.”

**Commissioner Dickey** asked if the time comes that the building is no longer a church, would the use of the lights be restricted. Planner Northrup-Robinson said the language specifies the additional parking lot is intended for church events only. There are two conditions that specify that parking lot is connected specifically to the church.

**Commissioner Dickey** said taking into account the character of the community, he believes the lights on that size of parking lot would be very detrimental. He would like
to find a way that wouldn't restrain the current applicant, but would restrict a future owner from having the lights on seven days a week.

Commissioner Fine asked if they are being consistent with this application. How many days are other churches allowed to have lights on? Are they being overly burdensome to the Mountain Life Church? Commissioner Harte responded this is a Conditional Use Permit. The task for the Planning Commission is to impose reasonable mitigating measures. Regardless of other CUPs, this is unique to this particular neighborhood.

Attorney Brackin said she agrees with Commissioner Harte. From her memory, the Church of Jesus Christ of Latter-day Saints has lighting regulations, as does the Temple Har Shalom, and others. Commissioner Fine said he is concerned they are not being consistent. Commissioner Harte said it may seem like the Planning Commission is targeting this mitigation for this particular church, but that is not the case. The Commission respects all churches and places of worship. The Commission is simply considering how this applicant may affect the Silver Creek neighborhood.

Commissioner Dickey added that he doesn't think the Commission is unfairly targeting a single applicant. When he drives by churches, he has noticed the lights are not on most nights. Because of that observation, he thinks there is a reasonable number that the applicant can live with. It would make him feel good that no one could turn the lights on every night of the week.

Commissioner Simons said during the last couple of meetings, there has been a lot of discussion about the parking lot and its size. There are indications there will be an expansion of programming at the church; however, they don’t know the specifics of
what that will be. Because of the programming expansion, the specifics about the lighting seem even more important to consider.

**Commissioner Cooke** said he wouldn’t oppose a motion to establish a certain number of days the parking lot can be lit, but he doesn’t feel the need to have a set number. **Commissioner Harte** said he also would not oppose a number for the lighting, but his ultimate goal is to support the needs of the community around the church.

**Commissioner Kucera** said there has been a lot of feedback about the lighting. He asked if the County has an ordinance that would apply. He noted that a neighbor was concerned about the time the lights would be turned off. Planner Northrup-Robinson said there isn’t anything in the Development Code that says all lights have to be turned off at a certain time. **Commissioner Kucera** asked Director Putt if he has any input.

Director Putt said Planner Northrup-Robinson is correct; the Code does not designate any times when lights are to be turned off. He thinks that establishing a number of days could be considered arbitrary, unless there is a reason that could be justified.

**Commissioner Kucera** asked about adding hours that the lights can be turned on. Director Putt said the Commission needs to address any negative consequences. In the case of the Winter Sport Park and Camp Woodward, a limitation on how late the lights could stay on was established. This was directed towards the specific uses of the project. The Commission continued the discussion about the lighting.

Mr. Budge said the use is allowed in the zoning district. They are not proposing to expand the uses to anything beyond what is allowed. They believe the language
suggested by Staff covers any reasonable concerns. It ties the use of the lower lot to a church event. He likes the changes suggested to Condition #10 and Condition #12.

Mr. Budge said if he were to advise the church, he would tell them to not agree to a certain number because a number has not been established in the Code. If a number is desired, he suggested the Commission create a text amendment and send it to the County Council.

Mr. Budge said there are State and Federal regulations saying that limitations cannot be imposed upon a church that is not imposed on similar uses. The Code doesn't impose a set number. He added the only reason the lights would be on would be for the safety of those attending the church. They will be regulated by the imposed conditions and that includes that the use must be tied to churches activities.

Commissioner Kucera said the applicants are doing everything they can to mitigate the impact of a parking lot. He asked if there is any kind of condition that would make sense. Attorney Brackin asked the Commission to not set a number of days. She agrees with Mr. Budge. Utah Code is very clear this is something they should stay away from, unless it is adopted in the Code. She hasn't heard an argument about why adopting a set number of days would mitigate a particular concern.

Planner Northrup-Robinson said she can work on the language if the Commission would like to have additional language tying a special event to the church. She noted there may come a time that the County will want to use this parking lot for a special event, such as the Olympics. They should be careful to not create a future conflict.
Chair Stevens asked Attorney Brackin if there can be a condition of approval that if the use of the church changes, the conditional use of the parking lot would be automatically be reviewed. Mr. Budge said that condition #12 indicates if the church use were to change, the new use would be obligated to comply with the current applicable lighting ordinance. Attorney Brackin outlined the options for the Commission. Because the use of the parking lot is tied with the church, she believes if the use of the building changes, the parking lot would be reviewed as well.

Planner Northrup-Robinson said the current language requires that any use beyond the church use, must be approved by Summit County. A special event permit would outline the use of the lights. Commissioner Dickey asked if there is any number the applicants would agree to. Mr. Budge said he wouldn’t recommend the applicants accept any number to limit the use of the parking lot. This would be an arbitrary requirement.

Mr. Budge said they are responding to the comments made at the public hearing by both the public and the Planning Commission. They have made the condition that the use of the parking lot has to be tied to the church. Additionally, the applicants have agreed to have the parking lot gated.

Chair Stevens asked the Commission to give input on what their feelings are after this discussion. Commissioner Simons said she thinks the language is as good as it can be. It will limit the use in the foreseeable future. Planner Northrup-Robinson said any change in the use of the church would automatically call up the parking lot use as well. Commissioner Dickey said they can revisit this when they update the lighting ordinance. Whenever they have a large parking lot in a residential area, there should be mitigating factors established. Chair Stevens said this has been listed as a possible action. She asked if anyone would like to make a motion.
**MOTION**

*Commissioner Harte made a motion to approve the Mountain Life Church Expansion and Parking Lot Conditional Use Permit according to the findings of fact, conclusions of law, and the conditions of approval, but with the proposed changes mentioned to conditions #10 and #12. These finding are outlined in the Staff Report and below. Commissioner Fine seconded the motion. All voted in approval.*

**FINDINGS OF FACT**

1. *Parcel SS-33-B-2-A-X, described as 11.0 acres, is zoned Specially Planned Area.*
2. *Parcel SS-33-B-2, described as 29.01 acres is zoned Rural Residential.*
3. *According to the current assessor’s parcel information, Mountain Life Evangelical Free Church of Park City is the owner of record for parcels Parcel SS-33-B-2-A-X and Parcel SS-33-B-2.*
4. *Parcel SS-33-B-2-A-X is subject to the Mountain Life Church Specially Planned Area and Development Agreement that was approved on December 18, 2000 by Ordinance 404 and Ordinance 405. All community benefits and open space obligations remain and are in full effect.*
5. *The existing church is considered to be a conforming use. Expansion of a conforming use is reviewed as a Conditional Use Permit.*
6. *All areas of expansion on Parcel SS-33-B-2-A-X are within the existing developed areas of the church, parking lot, and septic and drain field areas and do not encroach on the designated open space areas.*
7. *According to the Snyderville Basin Development Code 10-2-10, parking lots within the Rural Residential zone and Parcel SS-33-B-2 are subject to Conditional Use Permit review.*
8. *The application for a Conditional Use Permit for the expansion of Mountain Life Church and parking lot was submitted on November 5, 2018.*
9. *The proposal includes expanding the existing church from 18,346 square feet to 44,156 square feet.*
10. *The new parking lot on Parcel SS-33-B-2 will include 254 parking spaces.*
11. The total parking for the existing church site and new parking lot site will have a total of 351 spaces.

12. A new 1,800 square foot maintenance structure will be constructed in the new parking lot on Parcel SS-33-B-2 may house a shuttle and maintenance equipment, including but limited to, snow removal and landscaping equipment.

CONCLUSIONS OF LAW

1. The proposed Mountain Live Church Expansion and Parking Lot Conditional Use Permit, as conditioned, complies with all requirements of the Snyderville Basin Development Code.

2. The proposed use, as conditions, is consistent with the Snyderville Basin General Plan, as amended.

3. The proposed use conforms to all applicable provision of this title, including, but not limited to, and applicable provision of the Section and Chapter 4 of the Snyderville Basin Development Code, and the Snyderville Basin General Plan, and State and Federal regulations.

4. The proposed use is not detrimental to public health, safety and welfare, as the roads and public serviced in the area are sufficient to accommodate the increase in intensity of the use.

5. The use is appropriately located with respect to public facilities.

6. The propose use, as conditioned, is compatible with the existing neighborhood character and will not adversely affect surrounding land uses.

CONDITIONS OF APPROVAL

1. Staff shall review and approve all final landscaping plans for the site; including plat type, size, number, location, and method of irrigation and verify that they comply with the Snyderville Basin Development Code.

2. The Staff shall review and approve the lighting plan for the site; including building, parking area, and parking pole fixture type, number, location and cut
sheets, and photometric information for complete compliance with Section 4.22 of the Code, prior to issuance of a building permit.

3. As part of the building permit review, a complete set of stamped architectural drawing must be submitted to verify the proposed expansion, garbage and recycling facility and the 1,800 square foot maintenance shed in the new lower parking area meets the height requirements and architectural standards of the Code.

4. A detailed Development Improvement Agreement (DIA) shall be submitted to and approved by the County Engineer. This will also require sufficient bonding for all infrastructure improvements, landscaping, and re-vegetation. This plan must clearly denote the phasing plan for the project and triggers for landscaping and re-vegetation if the construction does not commence on the phases within the specific allotted time frame. This agreement shall be approved and recorded, prior to issuance of any development permit.

5. A construction mitigation plan that is compliant with Ordinance 714 and a storm water pollution plan compliant with Ordinance 381 shall be submitted and approved, prior to approval of a building permit.

6. All construction must comply with hours of operation as outlined in Summit County Code 5-3-9.

7. All necessary construction plan and inspections fees must be paid to the County Engineer, prior to issuance of any permits.

8. All service provider conditions shall be met to the provider’s satisfaction, prior to issuance of any development permits.

9. Any permitting required by the Army Corp of Engineers must be obtained prior to any work within the delineated wetlands for driveway access to the lower parking lot and construction of the boardwalk to access the church from the lower parking lot.

10. The use of the parking lots shall be in connection with church events only, unless otherwise approved through a special permit, granted by Summit County.
11. The two access points to the southern parking lot shall be gate controlled to prevent unauthorized use.

12. Lighting for the parking lot shall be activated in connection with church events during the hours after sundown. Automatic daily lighting is prohibited. Lighting in the parking lots will be operated in multiple zones with controls to utilize the minimum amount of lighting necessary during these events.

13. MLC shall provide interpretive signage along the pedestrian walkways and at the edge of the parking area to highlight the existence of existing wetland habitat and species and to describe the use and function of bio-swales providing pretreatment and retention of storm water before it is released into the wetlands. Only native species will be utilized in planting the designed bio-swales.

14. Modification to the layout of the southern area of the parking lot resulting from the development of Church Street may be approved administratively and not require an amendment to the Conditional Use Permit.

- MOTION CARRIED (7-0)

3. Public hearing and possible action regarding a Conditional Use Permit for a Minor Public Facility in the Rural Residential (RR) Zone; 3655 North Highway 224; Parcel PP-117-C; Mountain Trails, Applicant- Ray Milliner, Principal Planner

Planner Milliner said this application is for a Conditional Use Permit. The property is located at 3655 North Highway 224. A slide was shown of the vicinity map. The property was highlighted in yellow. St. Mary’s Catholic Church is directly across the street. The application is for an office for the Mountain Trails Foundation and Summit Lands Conservancy.

Planner Milliner said a public facility is a conditional use in the Rural Residential zone. Section 10-11-1 of the Development Code gives a definition of a minor public facility and a quasi-public use. He read the Code, which was found in the Staff Report. No
changes to the building are being proposed. This is a single family home. The building will require some renovations, but no expansions.

Planner Milliner said that Staff’s review of the application found that it meets the minimum required standards. Staff recommends the Planning Commission review the information in the Staff Report, conduct a public hearing, review the public comments, and vote to approve the CUP as outlined in the Staff Report.

The property owner, Pauline Ivers, said she feels this is a perfect use for the property. The location of the house is along Highway 224. This busy area is not conducive for a family residence.

*The public hearing was opened.*

Joe Wrona said he is not representing anybody connected to this application. He has known Ms. Ivers for approximately 20 years. He has known Charlie Sturgis, the applicant, for close to 20 years. They are both a credit to the community. They are rule followers. To his knowledge, they do not have a history of breaking the law or the established conditions.

*The public hearing was closed.*

**Commission Comments and Questions**

*Commissioner Harte* asked the applicant how long they believe they will be at this location. Mr. Sturgis said they are looking at a minimum of two years. After that time, they will re-evaluate.

*Commissioner Fine* asked about the parking. Mr. Sturgis said they won’t have public traffic; therefore, it will only be employee parking. There should be plenty of parking
available. **Commissioner Fine** asked if they have room for snow storage. Ms. Ivers said there is plenty of room to store snow.

**Commissioner Kucera** referred to the traffic on Highway 224. This is not only cars, but also bikers. He questioned how this will be managed. Should a condition be included? Mr. Sturgis said when they looked at the property they realized Highway 224 is problematic. He said they only have a few employees. They will be arriving at 7:00 a.m. In the winter time, there will be almost no use. They will operate out of a different location. If the drivers are alert, he thinks they will be okay.

**MOTION**

*Commissioner Harte made a motion to approve the application as outlined in the Staff Report and below. Commissioner Cooke seconded the motion. All voted in approval.*

**FINDINGS OF FACT**

1. **The applicant, Mountain Trails Foundation, is seeking approval of a minor public facility located at 2655 North Highway 224.**
2. **The property is zone Rural Residential (RR).**
3. **Section 10-2-10 of the Development Code states that minor public facilities in the RR zone are a conditional use.**
4. **The proposed location of the use was previously used as a single-family home with a home occupation.**
5. **The parcel is a lot of record and eligible for development under the requirements of the Snyderville Basin Development Code.**
6. **The proposed public facility would be the offices for the Mountain Trails Foundation as well as Summit Lands Conservancy.**
7. **No events or gatherings are proposed on site.**
8. **The proposal would require internal remodeling of the building, but no external changes are proposed.**
9. All necessary public facilities are available on site, including water, sewer, and roads.

CONCLUSIONS OF LAW

1. There is good cause for this conditional use.

2. The proposed Conditional use Permit as conditioned complies with all requirements of the Snyderville Basin Development Code.

3. The modification as conditioned is consistent with the Snyderville Basin General Plan, as amended.

4. The use is not detrimental to the public health, safety and welfare, as the roads and public services in the area are sufficient to accommodate the increase in intensity of the use.

5. The use is compatible with the existing neighborhood character and will not adversely affect surrounding land uses.

6. The effects of any differences in use or scale have been mitigated through careful planning.

CONDITIONS OF APPROVAL

1. All associated landscaping shall be native, drought tolerant plants.

2. Staff shall review all exterior lighting for compliance with the standards in Section 10-4-21 of the Development Code prior to the issue of a building permit.

3. All necessary permits must be obtained and fees shall be paid prior to the commencement of any construction activity, including but not limited to the Summit County Engineering the Summit County Building Departments.

MOTION CARRIED (7-0)

4. Public hearing and possible action regarding a Conditional Use Permit for an 8-room bed and breakfast in the former Colby School building. Parcel-PP-102-A; Hoffest, Applicant– Ray Milliner, Principal Planner
Planner Milliner said this application has come before the Commission several times in the past, but in a different form. This request is for an 8-room bed and breakfast inn. If approved, it will be located in the former Colby School building. He said in the Rural Residential zone, this is allowed as a conditional use.

The proposal is to configure the main structure to have eight rooms and a caretaker residence. The parking will remain the same. There will be no expansions or additions to the exterior to the building. There are no new exterior buildings being proposed. There is an existing LIP associated with the property, which is for a palates studio. This use is not an item for discussion at this meeting.

Planner Milliner said a couple of years ago the Commission approved a fairly significant expansion of this building. That expansion allowed for 16 rooms and a restaurant of approximately 5,000 square feet. This use was attached to a class II permit. The neighborhood appealed that approval. It went to the County Council for review. The Council denied the conditional use. The applicant is back with a revised application.

Staff’s review determines this application meets the minimum standards of approval. Planner Milliner said there is one complication. In the Code, a bed and breakfast is required for the structure to be owner occupied. Staff noted this building is owned by a corporation. Staff has asked in this case what constitutes being “owner occupied”? Is it the CEO of the corporation or some other person?

Planner Milliner said the legal department referred Staff to a conditional use that was approved a few years ago. This was the Silver Moose Bed and Breakfast. That situation was that the property owner was unable to live on the site. The bed and breakfast was being run by a person who was not part of the corporation. There was a lot of back and forth conversations. In the end, the County Council found that the person living there had to be a fee-interest owner of the property. Proof was required that was the situation. If this application is approved, Staff recommends a similar requirement is set.
Staff's recommendation is the Planning Commission review the proposed Conditional Use Permit, conduct a public hearing, and approve the proposed bed and breakfast as outlined in the Staff Report.

**APPLICANT'S PRESENTATION**

Brook Hontz, representing the applicant, said the Planning Commission saw this property in 2017. She said that even though this is the same property, it is different project. This application meets the standards required of a CUP. Even so, they have proposed conditions to mitigate some of impacts that the neighborhood may be sensitive to.

Ms. Hontz said she was in attendance for the public hearing for the Silver Moose Bed and Breakfast. She understands the reasoning behind the requirement for owner occupation. That is why owner-occupation is the first condition listed under the conditions of approval found on page 10 of the Staff Report. If the Commission has any questions, she is happy to answer them.

*The public hearing was opened.*

Joe Wrona said he submitted a letter to the Commission. He would like to emphasize a few of the points. The Colby School is surrounded by three residential neighborhoods. He represents all four families that live in the Brookside Subdivision, he represents six of the ten families that live in the Two-Creeks Subdivision, and he represents several of the families in the Park West Subdivision.

Mr. Wrona said a CUP is a permit for the use of the land or the parcel. He read the definition of conditional use found in the Code to the Commission. It says the appropriateness of a use in a particular location must be considered. The location is referring to the entire piece of property and the surrounding neighborhood.
Mr. Wrona said it would be inaccurate to say that the only thing the Commission must consider is the appropriateness of a bed and breakfast at this location. What needs to be considered is the overall use of this land which surrounded by the three neighborhoods. He listed the allowed uses, one of which is a bed and breakfast.

Mr. Wrona said the intention of a CUP is not to allow multiple uses. There will be multiple uses on this property unless a condition is imposed that the other uses must be removed. He believes this is what the County Council was giving guidance to when they issued a ruling in 2018.

Mr. Wrona said one of the important things that need to be considered is the definition of a bed and breakfast. It is not a hotel, where a caretaker has an apartment. The definition is that a bed and breakfast is an owner occupied residence. He believes the proposal is for a building, not a residence. A residence is a structure that can have up to eight rooms available for overnight lodging. If the land was used only for this, none of his clients would have a problem.

Mr. Wrona said this was building was not built as a residence. It was originally built as the Snowed Inn. After some time, it was converted into the Colby School. This application lacks a design for the structure to be a residence of the owner. That should be the first requirement. Someone who is filing a tax return should be able to say, this is my primary residence.

Mr. Wrona said if the owner is living onsite, that person would have the same concerns as the rest of the neighborhood. This would include the noise, the number of cars being parked, and the number of occupants in a room. If an owner had been living there, there wouldn’t have been 50+ people living in the rooms lined with steel framed bunk beds.
Mr. Wrona said there is a problem with the suggestion that this should be approved and the owner-occupancy will be satisfied in the future. That procedure would rob the public of the opportunity to make comment. There is nothing that prevents the applicant from dealing with the ownership issue now. This application should remain before the Planning Commission until the ownership issue is resolved.

Mr. Wrona said the Commission needs to look at the five criteria found in Subsection B of 10.3.5, they should also consider the nine criteria found in Subsection C. These are the special standards for conditional uses. He doesn’t believe this application meets those standards. It is not consistent, on the human scale, with the zoning or the other neighborhoods (see criteria #7).

Mr. Wrona said the proposal is for an expansion of a non-conforming use. The County Council has said that a non-conforming use is not allowed on this property. All of the structures on the property have to be considered.

Mr. Wrona said there is a non-conforming commercial building on the property. That building is the hotel. All of the outbuildings are also non-conforming. If permitted, the non-conforming use of the property would be expanded, particularly if they build a caretaker unit. He noted the application is for a caretaker unit, not an owner/residence.

Mr. Wrona said the additional uses that are on this property were granted based on an assumption the uses were vested, but they are not. The County Council has given directions that the goal for this parcel is to extinguish the other uses. He said the Commission can require the applicant to eliminate the other uses on the property if they want the bed and breakfast to be approved.

Mr. Wrona said his clients have not had a good experience with this neighbor. For the most part, his clients bought their property in a residential neighborhood that was
zoned to be a residential neighborhood. During the time this came to the Planning Commission as an application for a “special event” center a couple of years ago, the applicant was using the structure as an illegal dormitory. The County Council felt this was important. This was noted when they set forth their findings of facts.

Mr. Wrona said it is his request to task the applicant to revise this application to bring the overall land use within the RR zoning designation. He thanked the Commission for their time.

Mike Sonzini said he recalled that the County Council had a clear idea of what can happen on this parcel; therefore, he is confused as to why they are meeting on this application. If this is approved, can it be ensured that the conditions are adhered to?

Jess Bost said she lives in Park West Village. The Colby School has a designation of a single family home. That was the first designation. She is concerned about the slippery slope if a single family home is allowed to not rent rooms without an owner present. Where will this end?

When this building was the used as the Snowed Inn and the Colby School, the uses were compatible, but the events at Colby School were not. The events were fund raisers, and a few weddings. Even as early as 7:00 p.m., the bands playing were so loud, it was disruptive. Additionally, guests of the event would wander across property lines.

Mr. Bost said she worries about the current application and what events will be allowed. She is concerned about what is missing in the application. Perhaps Staff or the Commission can address that question. Can a “no events” condition be made?
Kathy Sonzini said it is disappointing to see the term “vested uses” being used in connection with this property. It was made clear in the 2018 County Council appeal, that there are no vested uses.

Ms. Sonzini said the statement has been made that this is located across the street from the Canyons Resort. She pointed out, this may be across the street from the resort, but it is not part of the resort. The property is zoned Rural Residential.

Ms. Sonzini said the owner occupied designation is important. During the days of the Snowed Inn, if the owner had lived there, they wouldn’t have had some of the problems they did. The police were called several times because the owner quit taking phones from the neighbors.

Ms. Sonzini said if an event is held, a special event permit should be required. This may help to limit the number of events. She would also like to see a limit on the number of consecutive days. If events are held for multiple days, it doesn’t fit into a residential community. She understands that meals will be offered to their guests. She would like the language to be very clear this service is to their overnight guests only. It shouldn’t be available to the fitness participants or others.

Ms. Sonzini said she doesn’t understand that the property is allowed to have multiple uses. How many permits are possible on a residential property? Can other permit applications be filed in the future?

The public hearing was closed.

Commission Comments and Questions

Commissioner Fine asked if the other buildings on the property are part of this application. What are they being used for? Ms. Hontz referred to the site plan found on page 4 of the Staff Report. She indicated the location of the bed and breakfast and
its associated parking. She also pointed out where the buildings with the existing LIP are located. None of the buildings are being enlarged.

**Commissioner Fine** asked who will live there. Who will be the caretaker? Ms. Hontz said the Code stipulates the building must be owner occupied. She said on pages 3 and 4 of the Staff Report there is language about the County’s position. Condition of approval #1 says that an owner who has interest in the property will be required to live there. **Commissioner Fine** asked if that person will have to live there fulltime. Can different property owners fill that role? Ms. Hontz said that could be the case.

Attorney Brackin said when there is an entity that owns some property, such as an LLC, the question arises as to who is the owner. Based on the decision of the County Council with the Silver Moose Bed and Breakfast, it has to be somebody that has a vested interest in the company. It cannot be a contracted employee. If an LLC owns the property, than an equity-owner of the LLC must live there.

**Commissioner Fine** asked if that means one owner will live there fulltime or can the person living there change. Attorney Brackin said she doesn’t think that would matter. The County Council has not said how much of an equity interest must be held by the person who lives there. Neither did they indicate if more than one person can qualify as an occupant. It has to be recorded what the percentage of interest is for the person who lives there.

**Commissioner Fine** asked if there will be other uses on the land in addition to housing guests of the bed and breakfast. Ms. Hontz said the intention is to operate a bed and breakfast. It is her opinion, if someone staying there wants to have a wedding celebration that would be a use consistent with a bed and breakfast. She added there have been no discussions about events taking place because that is not the intention of the permit. **Commissioner Fine** added that it concerns him to have multiple uses on the property.
Commissioner Dickey asked Attorney Brackin to what degree is the Planning Commission bound by the County Council’s decision on the occupancy with the Silver Moose Bed and Breakfast. Attorney Brackin said it sets a precedence of what the County Council’s feelings are on the subject.

Commissioner Kucera said he thinks the building fits the description of some of the existing single family residences found in the RR zone. He asked Planner Milliner if this fits the description for a single family residence found in the Code. Planner Milliner said that it does, if it is owner occupied. Commissioner Kucera said he is willing to follow Attorney Brackin’s direction about if this qualifies as owner occupied. He thinks it would be reasonable to limit events and consecutive nights.

Commissioner Dickey said looking at the 2013 decision, and looking at plain language, owner-occupied means that the owner occupies the property. That is a requirement of many loans, such as HUD loans. If a property is transferred to an LLC after the loan has been signed, that would be committing loan fraud. In his opinion, it isn’t possible for an LLC to fit the category of “owner-occupied.”

Commissioner Dickey said small hotels are not allowed in the RR zone, but a bed and breakfast is. The difference between the two is the second is owner-occupied. The reason that is required is because it provides mitigation to the effects of a hotel. If the owner lives there, that person would be concerned about the negative impacts. They would be part of the community. Negative conditions would not be allowed. To him, the definition of owner-occupied is different than what was described in 2013.

Commissioner Cooke said there is a definition of bed and breakfast in the Development Code. It doesn’t specify how many owners there can be. As he understands the Code, there could be multiple owners. What matters is that the person operating the business actually lives there. Commissioner Kucera said he
can see both sides of this argument. He thinks there should be a legal minimum established for the amount of ownership.

**Commissioner Dickey** said he doesn’t think it would be sufficient if the person operating the Bed and Breakfast is given a share in order to meet the qualification of owner-occupied. **Chair Stevens** said if someone is part owner of the company, but there is a falling out, that person may choose to sell their shares. How often would the owner-occupied status be changing? If it changes often, will the person living there really be a member of the community?

**Commissioner Simons** said the reason the owner-occupied status is required in the Code is it provides mitigation for the negative impacts that may occur. She said that earlier this evening, the Commission did a good job of mitigating impacts to a residential area. This is something the Commission can do.

**Commissioner Simons** said she thinks that **Commissioner Dickey**’s definition of owner-occupied is valid and fair. She is aware of situations where the primary members of an LLC are held accountable. She is concerned about events and the negative impacts that may be felt by the neighborhood. The applicants have said the events will be limited to the guests of the hotel. That seems reasonable. The concern of the neighbors is the frequency of events.

**Commissioner Dickey** said the County Council has stated that all of the uses on the property have been extinguished. He asked if the existing uses on the property are considered legal non-conforming uses. Attorney Brackin said the County Council decision was about Silver Moose and not about Colby School. Perhaps the decision can be looked at as instructive. The earlier decision had to do with what Code was in place, the uses in place, and other things that pertained to that specific situation.
Attorney Brackin repeated that the structure falls in line with the current definition found in the Code of a single family home. The question before the Planning Commission is if the applicant meets the requirements of the Code. If so, what mitigating conditions should be applied?

**Commissioner Dickey** said a comment was made in the public hearing that the applicant would have to extinguish the existing uses in order to have a bed and breakfast. He asked if that is accurate. Are the current uses non-conforming, or just uses? Director Putt said he will need to come back to the Planning Commission after he has time to weigh the issue.

**Chair Stevens** asked Director Putt if can speak about staffing and having multiple permits on the property. Director Putt answered that a Conditional Use Permit applies to the entire property and it runs with the land. That would not preclude a property owner from filing a CUP for another conditional use in the zone. He can imagine it is possible to have more than one conditional use on a property.

Director Putt gave the example that a parking lot is a CUP in the Rural Residential zone. If someone wanted to have a cell tower on the parking lot an additional CUP would be needed. He doesn’t think the parking lot CUP would have to be amended. He said approval of a new CUP would depend on the nature of the first one.

Attorney Brackin said there isn’t a blanket rule that says only one Conditional Use Permit can exist on a property at a time. To add a second CUP would be a call by the Community Development Director after a review with Staff. It would also depend on the application. These types of decisions would be on a case-by-case determination.

**Commissioner Dickey** asked what the difference is between an eight bedroom house with a nightly rental and an eight-room bed and breakfast. He was told that the bed and breakfast involves food preparation and anticipates onsite management by the
owner. A nightly rental has to be less than 30 days. Among other differences, there would be no management of the site. A bed and breakfast rents to multiple people simultaneously. A nightly rental rents to one party at a time.

**Commissioner Fine** asked how many people per room would be allowed at the Colby School. Attorney Brackin said the occupancy of the room would depend on the room’s configuration, meaning the type and number of beds. The fire code would regulate the number. **Commissioner Fine** asked if they should set a limit on how many people are allowed to be in a room. Attorney Brackin said the fire code dictates how the rooms are occupied.

**Commissioner Dickey** said the application calls for a caretaker unit. That condition refers to a manager, not a property owner. These words are saying something different than what they say the applicant is proposing.

**Commissioner Simons** said looking at the parking component, if they count the owner-occupied unit there would be a ninth room. That is within regulation requirements. The number of events should be considered. **Commissioner Cooke** said there was a request made by Kathy Sonzini that events would be required to go through a special event process. That seems like a reasonable mitigation.

**Commissioner Simons** asked if any of the Commission has concerns about the meal service morphing into a restaurant. **Commissioner Cooke** said it is very clear in the language of the Code that food and beverage is only for the guests. If the Code is followed, there could be no evolution.

**Commissioner Cooke** said the Colby School has been coming before the Planning Commission for a long time. The Planning Commission’s approval was overturned by the County Council. If they look at this application and not the past iterations, this is an allowed use under the existing Code.
Commissioner Cooke said there is a definition for a bed and breakfast, but not a definition for owner occupied. It is not the job of the Commission to decide how much of the ownership is required for the owner-occupancy status. It is the Commission's job to mitigate the impacts. The major impact he is hearing is about the events.

Commissioner Cooke asked if there are any plans for employees. How many parking spots would be required for them? Ms. Hontz said that typically a bed and breakfast of this size can operate with one to two people. The operating plan has not yet been looked at to make that determination. There may be one fulltime owner and a couple of part-time people. She pointed out a location where five additional cars could be parked. It is designated as service access.

Commissioner Harte said the crux of the issue seems to owner-occupied. He would like to look to the County to provide the guidance needed as to the definition of “owner-occupied.” Attorney Brackin said there are a lot of single family homes in the County that are owned by entities, not people. Staff can come back with more direction and information for the Commission. In the end, it will come down to a determination made by the Planning Commission.

Chair Stevens asked if the Commission can require the applicant to provide the owner occupied information prior to approval of the application. Attorney Brackin said that can be made as either a condition of approval, or be required prior to approval. Chair Stevens asked the Commission if they want to have that information prior to approval, or do they find the current language acceptable. Commissioner Dickey answered he doesn’t care because in the future it could be someone else. Commissioner Harte said the conditions of the CUP would apply if it is sold.

Chair Stevens said from the conversation, it seems the Commission would like to add a condition of approval for special events. She said an example of possible language was given by a member of the public. This language was that an event held by
someone who is not a guest at the bed and breakfast, must have a special event permit. **Commissioner Harte** said he can see several loopholes. He thinks the language should be tightened up.

Ms. Hontz said instead of a loophole, she thinks tightening up the language is more about clarity. Both the owners and the guests need to understand what the limitations are. She suggested it would be appropriate to state how special event permits are obtained at this time and that is the process that must be followed.

Mr. Hontz said a perhaps a specific number of allowed guests could be established. That would help the language to be definitive. **Commissioner Harte** said it is important to have clarity on both sides.

Ms. Hontz said she is interested in the other things that need to come back at the next meeting, such input from the Attorney’s Office. She noted information was provided from the Attorney’s Office and it was provided in the Staff Report. As applicants, they believe this can be owner-occupied as outlined in provision #1. They have a legal case setting precedence and allowing this to happen. She believes this application meets the minimum standards.

**Commissioner Cooke** said this has been before the Commission before. They made a decision that was overturned by the County Council. He thinks what is being asked for is reasonable. **Commissioner Fine** added the more information the Commission gets, the better off everyone will be.

**Chair Stevens** asked if the Commission would like to have the minutes from the County Council of the appeal by the neighborhood. **Commissioner Harte** said initially, he wanted to have their minutes because the Commission was never given an explanation of why the Commission’s decision was overturned. When he thinks about
what is before the Commission now, their decision is immaterial to the current
decision. Understanding their decision may be more appropriate for training.

**Commissioner Kucera** asked if the Commission is clear about the legal language in
the Staff Report, or would another statement from Attorney Brackin help to make it
abundantly clear. Attorney Brackin said she isn’t sure the Attorney’s Office will
provide an actual legal opinion. They have given the precedence of the Silver Moose
Bed and Breakfast. What she can do is give the Commission other things to look at,
such as the definition of a dwelling unit.

Attorney Brackin said at this time, she thinks the Commission’s decision is if they
need to decide if the owner-occupancy requirement has been met. Alternatively,
should the owner-occupancy determination be made a condition of approval prior to
a certain trigger? If that condition is set, Staff would make the determination if the
requirement has been met when the trigger is reached.

Attorney Brackin said Staff is recommending the trigger is an application for a
business license, but there are other options. If renovation takes place, the trigger
could be before a building permit is issued. **Chair Stevens** said it seems that the
Commission would like to have that be required as a condition of approval because it
runs with the land.

Director Putt said in deference to all of the involved parties, he thinks it would make
sense to understand the nature of the structure of the ownership. He would like to
give Staff the time to pull together the details of the prior precedence. If there is some
kind of problem, it would be best to take care of it upfront. It would be a protection
for both the applicant and the neighbors.

Ms. Hontz asked what will be coming back at the next meeting. Will it only be for
more information from the County Staff and the legal department? Attorney Brackin
said in addition to that, they may want to have language that caps the number of guests of a special event.

Ms. Hontz said they have agreed that they want the owner occupancy to run with the land. They want to have that person live there. She doesn’t think it is appropriate for the Commission to ask for more than that. They are happy to make sure they meet the standard of the law. She will be looking for a decision at the next meeting.

Commissioner Simons said additionally, the Commission would like for Staff to give more context about the precedence. Director Putt said if more information is coming back, Staff will renotice the public hearing.

5. Approval Of Minutes

October 8, 2019:

Commissioner Kucera made a motion to continue to approve the minutes as written. Commissioner Simons seconded the motion. All voted in approval.

• MOTION CARRIED (5-0) Commissioner Simons and Commissioner Fine abstained as they were not in attendance.

October 22, 2019:

Commissioner Kucera made a motion to continue to approve the minutes as written. Commissioner Simons seconded the motion. All voted in approval.

• MOTION CARRIED (5-0) Commissioner Harte and Commissioner Fine abstained as they were not in attendance.

DRC UPDATES (None)
**Commission Items** *(None)*

**Director Items**

- The upcoming agenda items were reviewed. The March 24th meeting will be cancelled to the caucus. The next scheduled meeting will be April 14th.

- **Commissioner Cooke, Commissioner Harte, and Commissioner Fine** were reminded their terms are coming to a close. A reapplication is due if they wish remain on the Commission.

- The County Council started their review of the Master Plan chapter of the Development Code.

**Adjourn**

At 7:36 p.m., the meeting was adjourned.

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Approval Signature