

City of Colorado Springs Planning Commission Meeting Minutes

THURSDAY, JULY 20, 2017

**CITY HALL CHAMBERS, 107 N. NEVADA AVE,
COLORADO SPRINGS, COLORAD 80903**

MEETING CALLED TO ORDER AT TIME: 8:30

MEETING ADJOURNED: 11:56

PRESENT:

Fletcher, Graham, Henninger, McDonald, Markewich, Raughton, Satchell-Smith, Smith, Walkowski

ABSENT:

None

ALSO IN ATTENDANCE:

Mr. Peter Wysocki, Planning Director

Mr. Marc Smith, City Senior Corporate Attorney

NEW BUSINESS CALENDAR

Item #: 6.A.1 – 6.A.3: AR PFP 17-00122; AR NV 17-00123; AR NV 17-00124

Project Name: 28 Polo Preliminary and Final Plat

Planner: Lonna Thelen

Staff presentation:

Ms. Lonna Thelen gives a Power Point presentation

- I. Vicinity Map
- II. Zone
- III. Appeal of the applications
- IV. Neighborhood meeting
- V. Proposed Plat
 - A. Existing home torn down
 - B. Lot be divided into 2 lots
 - C. Slope goes to the north
 - i. Preservation area in the north
 - D. Lot width
 - i. Must be met at the front and maintained to the rear setback
 - ii. Front is met
 - iii. Rear not met
- VI. Concerns
 - A. Neighborhood character
 - B. Drainage
 - C. Geologic Hazards
- VII. Neighborhood Character
 - A. New lots not in character of existing neighborhood
 - B. Proposed lot size contributes to not matching character of existing neighborhood
- VIII. Variance for lot size
 - A. Exceptional or extraordinary conditions
 - i. Lot shape
 - ii. Preservation area over the steepest slope in the north
 - iii. Limited lot coverage to 15%

- B. No reasonable use
 - i. Reduction of lot size 3.85%
 - ii. Surrounding properties vary in size 11,000 to 31,000 sf
 - 1. 8 properties less than 20,000 sf
 - 2. Precedent set for lot sizes smaller than 20,000 sf
 - C. No adverse impact to health, safety or welfare of surrounding properties
- IX. Lot width
- A. Exceptional or extraordinary conditions
 - i. Front lot line meets the standard
 - ii. Rear portion of lot preservation area due to slope
 - iii. Limit cover lot coverage to 15%
 - B. No reasonable use
 - i. Without variance don't have as reasonable use as surrounding properties
 - C. No adverse impact
- X. Drainage
- A. Final report approved
 - B. No increase to flow rates
 - C. No significant change to existing drainage patterns
- XI. Geologic hazards
- A. Geologic report approved
 - B. Geologic hazard concerns
 - i. Expansive soils
 - ii. Downslope creep areas
 - iii. Potentially unstable slopes
 - iv. Seasonal shallow groundwater
 - v. Artificial Fill
 - C. Majority of concerns in the preservation area
 - D. Neighbors' concerns were groundwater
 - i. Groundwater not encountered at 20' boring depth
 - 1. Foundations not expected to be affected

Appellant presentation

Gary McLaughlin lives at 27 Polo Drive and his concern is setting a precedent being set that the developer will go into the neighborhood and cut up lots. He's appealing for an aesthetic value. It will affect everyone in the neighborhood. They've experienced this developer living in the neighborhood previously. Once his development starts they do not stay the same size as originally proposed, they get much bigger pushing the property lines. He's hopeful that the developer could stay within the 15% of lot coverage and that the lot coverage would be enforced.

Commissioner Raughton asked if there were covenants in the neighborhood regarding lot size. Mr. McLaughlin said no.

Commissioner McDonald confirmed there were several lots within the neighborhood that are below the 20,000 sf requirement.

Applicant Presentation:

Bruce Fallhouse, Manager for 28 Polo, LLC discussed the reason for the appeal.

- 1. Requires variances for both lots
 - a. Asked if there was an advantage to dividing into an 18,000 sf lot and a 20,000 sf lot
 - i. No advantage

2. Assertion that 50% of the neighbors are against the subdivision.
 - a. At the first review 26 of 129 raised concerns about subdividing
 - b. Second review 9 of 129 raised concerns about subdividing
 - c. One appealed filed
 - d. A minority oppose the subdivision
3. The serious issues regarding the drainage and lot slippage have been raised
 - a. Entech Engineering completed the Geohazard report
 - i. Reviewed by the City and approved
 - b. Monument Valley completed the drainage report based on Polaris Surveying Information and Topography
 - i. Reviewed by the City and approved
4. By having two lots it doubles the potential for problems.
 - a. Approval letter stated there will be a preservation area on the steep slope of the property to protect the slope
 - b. Applicant limiting lot coverage to 15% to limit impact on surrounding properties
5. Dividing the lot will set a precedent
 - a. Subdivision is review on its own merit
 - b. If approved it wouldn't set a precedent

Commissioner Smith asked if the preservation area included in the 15 %. Mr. Fallhow said no and its memorialize on the plat.

Questions:

Ms. Thelen clarified that it's 15% of the lot size total. The total of the lot is 19,230 sf. They would be allowed to cover 15 % of that with a structure. They can't put the structure in the preservation area.

Commissioner Smith said then the preservation area is included in the 15%. Ms. Thelen said yes, you just can't put a structure there. It's a total of lot coverage.

Supporters of the application: None

Opponents of the application :

Dennis Weber lives at 715 Bear Paw. They've lived there since 1982 and over 35 years there's been significant drainage problem on his and his neighbor's property. The city's been out several times regarding the drainage problem off the hill and they aren't sure what causes the problem. Streets flood in the summer, mold grows in the gutters along Bear Paw, freezing occurs during the winter because of runoff. They thought this was ground water but eventually the city determined there was some type of pipe that begins on Polo runs down the slope of the hillside into his property and then he pumps the water out into the street so that it doesn't stay in his yard or his neighbor's yard. His concern is regarding changes at the top will cause dramatic changes on the bottom and after a time it will become his problem. He wants to be on record that digging two additional foundations could affect the ground-water and change the entire hydraulics and will be his problem.

DiDi Dierterich she lives at 21 Polo Circle. She and all of her neighbors are against this application. When she moved into the neighborhood they had the expectations that it would stay the same as it was. They'd have large lots and not subdivided into smaller lots. Why change the character of the neighborhood. There is no necessity to subdivide this lot. There will be adverse effect to the neighborhood. This isn't the type of neighborhood they want. Mr. McLaughlin is appealing on behalf of all the neighborhood.

Tom Perkins he lives on Bear Paw Lane which is below this property. His question is the process. You check everything before you buy it and if what you want to do with the property works you buy it. The applicant has done it the reverse way. He has a plan but, it doesn't fit into what planning has set up for the neighborhood, so he buys the property and wants the city to change to fit his plan. He doesn't think it meets the three requirements. There's no extraordinary condition and there is a house on the property. You're talking about knocking down a house, splitting the lot, and building two houses on it. Regarding no reasonable use, there is a reasonable use a house is already there. No adverse effect yet there is a petition with over 130 signatures against this. The integrity of the public process is in question. Why go through all this and then do what the neighborhood doesn't want and what the zoning doesn't allow. Lot size is deceptive and there's not as much building area as you think. Why does one person have to do it one way and another do it another way because you'll get a different answer from a different planner. He has a history in the neighborhood of pressing the envelope and that's why the neighborhood doesn't want it. You will be setting the precedent. You could do something different than split the property and knock the house down.

Aaron Johnson lives at 23 Polo Drive and he'd ask how much of the area is taken up by the preservation area. If it's 15% lot coverage and you subtract the preservation area and the proposed development is over 15% total it's becomes less to build on. It's not within the character of the neighborhood. The precedent will be set for splitting a lot for two houses. That will be the precedent. Yes there are lots smaller than the 20,000 sf. On the original Polo plat there are all different sizes of lots. The homes are older in the neighborhood and that's what we like. There is a house there that is in bad shape but it could be improved. He doesn't think what is being proposed is the right way to go about it.

Miles Matthew spoke about property rights. He also made an important point for him about geological issues because there was a sink-hole that occurred in that street about four months ago. He's not sure what caused it and what was done to mitigate it. There's been concern mentioned of flooding onto Bear Paw and piping in the area that needs to be considered. There was only one bore hole done on the property to determine if it was geologically sound and he doesn't know if that's enough.

Paul O'Brien lives at 26 Polo. He has two items. One, no reasonable use for the property, there is one there's an existing house that could be a single family home which is a reasonable use. The second one is the lot shape. City staff stated it almost meets that 100-ft width. He feels that was a significant point. The applicant is asking for the variance to give him that extra space

Lisa Sacco she lives at 16 Polo Drive and has one of the smallest lots. She bought the house about one year ago and has been renovating it. She thinks the applicant could do the same to his property. She thinks the neighbors that are opposed to this because it will let the neighborhood slip away one lot at a time. There are so few neighborhoods in Colorado Springs that can be preserved and when she went around to the neighbors to ask about the project, she got over 130 signatures in opposition.

Susan Marquez lives at 14 Polo Drive. She thought a single home was a reasonable use it does doesn't need to be split. She agrees with much of what has been already said. She doesn't want all the lots to be divided along the whole street. It will set precedent. The sink hole happened at the end of her driveway and they have no idea what caused it so that needs to be check into and if the area is geologically sound or what is going on in the area to cause that. She worries about neighbors and drainage. What happens when all the trees get cut down if the trees what is holding that soil. Slow down and take a careful look at it.

Appellant:

Mr. McLaughlin stated all the concerns have been voiced and he appreciated the opportunity to be heard and asked that Commissioners take them into consideration because the home owners will have to live with their decision for years.

Applicant:

Mr. Fallhouse stated there's confusion because the subdivision application was approved this is an appeal to that application. As part of the approval the drainage issue was addressed and approved so it's been brought to closure.

Commissioner Walkowski asked why subdivide. Mr. Fallhouse stated the original intent was to build a home for his wife and himself. The current structure was built in 1951 and they have looked at every option to try and preserve the structure or the foundation. He's a general contractor and it's not feasible in its current state. When it was bought through the foreclosure market there were 14 people that bid on it and some wanted to subdivide it into three lots. He wants to build really small home, he has completed an initial design, with all the building and a deck it will be approximately 2,000 sq. ft. It made sense to remove the existing structure, apply for the subdivision application it would give them a lot they may be able to use in the future for their family. So live in a smaller structure and possibly do same on the lot next to it.

Commissioner Walkowski said you could build the house you're talking about on the existing lot as is. Mr. Fallhouse said yes and he could build the house on one lot or build it on an even smaller lot.

Commissioner Walkowski said you're voluntarily coming to the City to replat, correct. Mr. Fallhouse said he made a subdivision application to the city that was approved, a preliminary and final plat that were approved, there was an appeal, and he's at the meeting with an affirmative defense to the appeal.

Questions of Staff

Commissioner Markewich about how the 15% lot coverage was calculated. The coverage is on the all the structures on the lot. It doesn't include driveways. If decks are over 18-inches they are included in the lot coverage and potentially porches depending on the height.

Commissioner Markewich said from a drainage standpoint when the engineers did the drainage will the water coming off the structures go back onto Bear Paw or will it go onto Polo Drive. Ms. Thelen said she'd defer to Patrick Morris to answer that.

Patrick Morris with City Engineering Development Review stated according to the drainage report they are following the historic drainage on the lot which is towards the northwest and the proposed lots continue that same pattern. It's doesn't address downspouts or runoff from a roof.

Commissioner Markewich asked if Mr. Morris knew anything about the pipe mentioned by the neighbor. Mr. Morris said there was no mention of the pipe going from Polo Drive to Bear Paw. Commissioner Markewich confirmed City Engineering was fine with the drainage part of the application. Mr. Morris said yes.

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Addressing a comment from neighbors regarding the lack of a formal process, Commissioner Markewich stated this is a part of formal process for reviewing items in different situations and circumstances. This lot is nearly twice the size of neighbors directly around the area who have less

than 20,000 sq. ft. If we allow the division of this lot, the remaining two lots will be less than 4% off that required 20,000 sq. ft. The staff is typically allowed to adjust and make administrative allowances when a requirement is within a small percentage from our written code and this fits in with this. It's not a huge difference. Every time neighbors see something near their home we think in the worst case scenario. They may get lucky and end up with 2 new great neighbors instead of just one. He didn't believe it will degrade the neighborhood; we're not that far off from the letter of the code and based on that, and the professional staff, the engineers all have allowed it to go forward and looking at the review criteria and he believes it's a reasonable use. He's going to vote to deny the appeal.

Commissioner Raughton stated he had to take exception to some of the arguments by staff. In his experience precedent becomes policy. We can argue about lots split in the future if we approve a lot split. Is it an appropriate lot split? First of all it's a compromised site and from his language thus the reason for the preservation easement. The basis of zoning talks about adequate light, air and useable space. When you look at this site one-third of the site is compromised, less usable and one-half of the remaining lot is unusable in terms of that lot. That concerns him in relative to this specific precedent. Commissioner Raughton stated he lives in an adjacent neighborhood, the Portales neighborhood, and they have covenants that prevent this but this neighborhood isn't protected in that way. He will not be voting in support.

Commissioner Walkowski stated he appreciated staff working with the applicant to try and make this work. As he looks at the review criteria and it says this appeal is reasonable, erroneous, against the expressed intent of the zoning ordinance. When he looked at the review criteria for use variances you have to prove reasonable use. The lot as is has reasonable use. But what's happened is the applicant has voluntarily requested additional lots when then makes it non-reasonable due to the various reasons the planner has come up with but reading the review criteria it says this explicitly: "the self-imposed conditions such as voluntarily platting does not constitute evidence of no reasonable use." His argument and thinking is that this does not meet the criteria for no reasonable use and he will not support it. In the past he's voted for a number of marginal projects based on the code. He looks at the code and uses his judgement it doesn't meet the code and that's the reason he's not in support.

Commissioner Henninger stated Commissioner Markewich brought up a point that we look at a lot of things uniquely because someone is asking for a variance or something is going to change. He looked at the lot and the basic concept for what is planned could be reasonable in some situations. He has to take in consideration the size of the lot in relationship to the easement applied to the lot and then apply the criteria. Understanding that a portion of this lot is unusable he has to back off and look at what would be built on the remaining section. He doesn't agree with the Planning Department as far as taking in the whole thing and including the square feet associated with the easement. As a result of that he cannot go ahead and support the application. He will support the appeal.

Motion Commissioner Markewich, seconded by Commissioner Smith on **AR PFP 17-00122 – Preliminary and Final Plat** to deny the appeal and uphold the approval of the preliminary and final plat for 28 Polo Drive, based upon the finding that the preliminary and final plat complies with the review criteria in City Code Section 7.5.906.A.4.

Aye: Fletcher, Graham, McDonald, Markewich, Satchell-Smith, Smith,

No: Henninger, Raughton, Walkowski

Passed: 6-3

Motion Commissioner Markewich, seconded by Commissioner Smith on **AR NV 17-00123** to deny the appeal and uphold the approval of the nonuse variance to allow two 19,230 square foot lots where 20,000 square feet is required, based upon the finding that the nonuse variance complies with the review criteria in City Code Section 7.5.906.A.4.

Aye: Fletcher, Graham, McDonald, Markewich, Satchell-Smith, Smith

No: Henninger, Raughton, Walkowski

Passed: 6-3

Motion Commissioner Markewich, seconded by Commissioner Smith on **AR NV 17-00124** – to deny the appeal and uphold the approval of the nonuse variance to allow a 67 foot rear yard lot width for Lot 1 and a 59 foot rear yard lot width for Lot 2 where 100 feet is required, based upon the finding that the nonuse variance complies with the review criteria in City Code Section 7.5.906.A.4.

Aye: Fletcher, Graham, McDonald, Markewich, Satchell-Smith, Smith

No: Henninger, Raughton, Walkowski

Passed: 6-3