



**Archuleta County Development Services Department
ARCHULETA COUNTY PLANNING COMMISSION MINUTES**

Archuleta County Planning Commission Minutes, Regular Meeting June 26, 2019

The Archuleta County Planning Commission held a meeting on Wednesday, June 26, 2019, at 6:00 PM at the Archuleta County Commissioners Meeting Room, 398 Lewis Street, Pagosa Springs, Colorado. Chairman Frederick called the meeting to order at 6:00pm.

Commissioners in attendance:

Michael Frederick, David Parker, Lisa Jensen. Anita Hooten had an excused absence. Betty Shahan was absent.

Staff in Attendance:

John Shepard, AICP, Planning Manager; and Flora Goheen, Planning Technician

Public in Attendance:

John Finefrock - The Pagosa Sun; Reid Kelly, Attorney for Mr. Beaubouef; Joe Beaubouef, Howard & Colleen Doan, Randy Fehrenbacher, Pagosa Central.

Consent:

Minutes for the May 22, 2019 meeting.

Commissioner Parker moved to approve the minutes as presented. Commissioner Jensen second. Vote 2-0 aye.

New Business:

VACATION RENTAL REFERRALS AND APPEALS

Vacation Rental Permits are an Administrative Conditional Use Permit (CUP), subject to appeal to the Planning Commission under Section 3.2.3.1(2). Sec. 5.5.6.2(6)b also provides that where rental property has not been in compliance with the Land Use Regulations or County ordinances, then the Director shall refer the application...to the Planning Commission for review at a Public Meeting.

Vacation Rental Referral: Doan, 78 Tejas

Referral of Vacation Rental permit application VR18-068 Doan 78 Tejas VR, for determination if permit can be approved while an accessory structure is out of compliance with building code on the property.

Mr. Shepard summarized the staff report. Property Owner Colleen Doan completed a Pre-Application Conference on 9/05/2018, early in the new short-term rental permit process, and applied for Vacation Rental Permit VR18-068, accepted 11/18/18, for 4 bedrooms at her home at 78 Tejas Pl in San Juan River Village. The Assessor's record shows 2 bedrooms. During the application process, staff determined the original building permit for the Detached Garage had expired without inspections, so the completed garage structure could not be legally occupied without a new permit.

After 6 months, Applicant has not yet applied for a building permit. A Building Safety Inspection was scheduled for the Dwelling on 5/29/19, with the Local Owner's Representative Harvey Burch. The Inspector found 3 bedrooms in the home, (rooms meeting the requirements for a bedroom). This property is zoned county Residential (R), in which short-term rentals were illegal prior to 10/1/18, so no non-conforming "grandfathered" rights apply.

Section 2.1.1 of the Archuleta County Land Use Regulations states that "Any development, redevelopment or change in land use shall be completed in conformance with these Regulations...building and construction permits pursuant to the uniform codes adopted by the County, and must comply with all other applicable County requirements." As a general principle under this requirement, no new permit can be approved on a parcel with an open violation of any other permit or regulation. Section 5.5.6.3(1) for Vacation Rentals states:

- a. Any dwellings offered as Vacation Rentals, in whole or in part, shall be in conformance with all applicable building codes.

However, staff does acknowledge it is the detached garage, not the principal dwelling, that is not in conformance with building code. While the property owners did submit a Vacation Rental application before December 31, 2018, as required by Section 5.5.6, it is not clear that staff can approve the current permit or accept a renewal until the existing code violations are corrected.

1. One option is that, since continued operations have been at risk to the property owner, short-term rental is are subject to enforcement action by the County attorney with potential fees and fines due.
2. Another option would be to approve VR18-068 and suspend operations under the renewal until a building permit is issued, under 5.5.6.2(6): b. Where rental property has not been in compliance with the Land Use Regulations (including the Performance Standards in Sec. 5.5.6.3) or County ordinances, then the Director shall refer the application for renewal to the Planning Commission for review at a Public Meeting.
3. Applicants propose a third option, that the Planning Commission approve Vacation Rental permit VR18-068 as presented and allow renewal for VR19 to continue short term rental operations with a condition that the property owners “proceed in good faith” to obtain the after-the-fact building permit.

Chairman Frederick asked the Applicants for their response to the staff report. The Doan’s spoke to the violation for the detached garage and made a statement. Due to circumstances beyond their control, Applicants requested that the Commission approve their 2019 CUP to continue vacation rental of the main house with a condition of approval (COA) that they continue good faith efforts toward renewing the building permit for the detached garage and loft. The garage was built by the previous owners who apparently obtained, but never finalized, their permit. Although they tell Applicants they are certain their contractor conducted all inspections, including the final inspection, the County has no records following the initial issuance of the permit many years ago. Ms. Doan states that she and her husband are Colorado natives who attended the University of Colorado. They have been visiting Pagosa Springs for more than 55 years.

After questions and discussion, Lisa Jensen moved to approve Vacation Rental permit VR18-068 and VR19 renewal as presented in option 3 of the staff report, for the main house to be permitted not the detached garage, with conditions that the property owners precede in good faith with building permits to bring the detached garage in compliance. David Parker seconded. Vote 3-0 aye. Planning Commission members directed staff and Applicant that The Planning Commission would like updates and will re-evaluate for the 2020 vacation rental permit for process towards completion.

Vacation Rental Referral & Appeal: Adonai’s, 620 Santino Pl.

Referral of Vacation Rental permit application VR19-215 under Sec. 5.5.6.2(6)b, and Appeal for determination if 2nd structure is a legal dwelling unit and/or eligible as a Vacation Rental.

Mr. Shepard summarized the staff report. Joe Beaubouef, Adonai’s PL LLC, of Shreveport, Louisiana, owns a Single Family Dwelling on Lot 70 The Reserve at Pagosa Peaks Phase 3 Subdivision at 620 Santino Pl., a 0.86 ac lot which is zoned Planned Unit Development (PUD). In 2016, written complaints were received that the owner was offering short-term rentals in violation of covenants (adopted by reference with PUD zoning), and the owner was cited with a Notice of Violation (ENF16-00013).

In 2018, the Board of County Commissioners legalized short-term rental of any legal dwelling unit, with a Vacation Rental Permit, and required any existing operators to apply for a permit no later than 12/31/18. The Property Owner failed to begin the application process and was cited again 4/02/19 (after multiple courtesy notices) with Notice of Violation of the revised regulations after new complaints were filed. On 4/08/19, Jeannie Bartholomew completed a Pre-Application Conference on property owner’s behalf, and applied for a Vacation Rental Permit on 4/25/19, paying a double “after-the-fact” application fee acknowledging operations continued while the permit is under review, at the property owner’s risk. Randy Fehrenbacher, Pagosa Central Management, is Local Owner/Representative and the unit is listed on his website (“Whispering Pines Lodge” advertised for 14 individuals).

Section 5.5.6.2(6) of the Archuleta County Land Use Regulations provides that where rental property has not been in compliance with the Land Use Regulations, the Director shall refer the application...to the Planning Commission for review at a public meeting. The primary residence on the parcel has 4 bedrooms, provided in Building permit #2006-459, and is not in contention if operated within the Performance Standards (4 bedrooms x 2 occupants per bedroom + 2 overall = Maximum Occupancy 10 people).

Applicant is also appealing staff’s determination regarding use of the Detached Garage & “Guest House” for the Vacation Rental. Sec. 11 of the Land Use Regulations provides definitions:

Vacation Rental: Residential use of a *dwelling unit*, or any portion thereof (including a Manufactured Home) as a short-term rental accommodation for no more than thirty (30) days, subject to Colorado state sales tax under CRS 39-26-704, where no meals are served or provided to renters.

Guesthouse: An accessory building designed and used for the purpose of providing temporary living accommodations for guests or for members of the same family as that occupying the main building, and containing no kitchen facilities.

Dwelling: A building used exclusively for residential occupancy, with complete living facilities including kitchen, bathroom and sufficient living area to meet the minimum requirements of the adopted residential building code.

Dwelling Unit: One (1) or more rooms and a single kitchen and at least one (1) bathroom, designed, occupied or intended for occupancy as separate living quarters for the exclusive use of a single family for living, cooking and sanitary purposes, located in a single-family, two-family or multi-family dwelling or mixed-use building.

There are two questions here for the Planning Commission's consideration:

1. Has the Garage & Guest House been converted to a Single Family Dwelling legally, which would allow use as a Vacation Rental?
2. If not, then can a Guest House as defined by used as a Vacation Rental?

Zoning allows one house on one single-family lot, with a general exception for two homes on a larger lot. In this case, covenants for the Reserve in effect when the PUD zoning was adopted (Section III Dwellings) restrict all lots to "residential use with one single-family dwelling permitted per lot". Two dwellings on one lot are only permitted when an Owner has consolidated 3 or more lots into one legal lot. However, the Covenants do provide that the Reserve's Architectural Review Committee may "allow reasonable variances and adjustments of the restrictions".

The previous owner applied for a building permit for a 2nd single family residence, which was modified to "Garage w/Living Space" (#2008-1), for a detached accessory structure with no bedrooms and no bathrooms. No Planner was on staff at that time and the Building Official signed a Certificate of Occupancy on 8/28/2014 with Use Classification "SFR". During the Vacation Rental Building Safety Inspection on 6/11/19, the Code Enforcement Officer confirmed the upstairs is finished with a bedroom and full kitchen, meeting the definition of Dwelling Unit such that this structure would be considered a 2nd Dwelling Unit, not in conformance with zoning.

If Question #1 is yes, then Question #2 is moot at this time. If not, then we need to confirm that a Guest House may not be used as a Vacation Rental, under the Regulations adopted in 2018. A "Vacation Rental" is defined as use of a dwelling unit. A Guest House is not a dwelling unit by definition, and Mr. Shepard noted staff's intention was to not allow use of a guest house for short-term rental. PLPOA is insistent about this, but today's question was for The Reserve, not PLPOA.

Chairman Frederick asked the Applicants for their response to the staff report. Mr. Kelly, the applicant's attorney, gave a brief summary of the situation and addressed the County and The Reserve POA's concerns with complaints about occupancy, special events, parking, and second dwelling unit. The Reserve POA did approve the detached garage with the kitchen as built. The Applicant does not rent the space in the detached garage separately from the main house, and would like the additional bedroom to be included as part of their application for the main house.

Local Owner/Representative Randy Fahrenbacher also spoke, addressing the 2016 complaints when a tenant chose to hold their wedding on the property without permission. Mr. Fahrenbacher also addressed advertising on his website, for this unit and others. Mr. Shepard noted that enforcement to date has been on a complaint basis, and staff has not yet started spot checking advertising until they are caught up on applications. The Town of Pagosa Springs contracts with a consultant to check advertising, and staff will be reaching out for a proposal to cover the county as well.

Mr. Fredrick noted that the Vacation Rental regulations state nothing about a guest house but does mention dwelling units. Instead of trying to decide the difference between dwelling unit or guest house, he considers the extra bedroom as an additional room accessory to the principal dwelling, as a fifth bedroom. This changes the occupancy from 10 to 12 people. Lisa Jensen agreed with approving as a fifth bedroom.

David Parker moved to approve the Vacation Rental permit with a fifth bedroom as one unit, with the condition that the kitchen have the gas disconnected to the stove, which would give an occupancy of 12. Lisa Jensen seconded. Vote 3-0 aye.

Reports and Announcements:

COGCC SW Co Gas & Gas Regulatory Team Meeting. Mr. Shepard attended the Colorado Oil & Gas Conservation Commission (COGCC) GORT meeting in Durango. They are working on changes in procedures in response to SB181.

Report Back Out of BoCC Work Session. Chair Fredrick stated he would like to postpone feedback from the Joint Work Session until the full Planning Commission is in attendance.

Member Comments:

None.

Next Meeting:

Regular Meeting July 24th – There a 2 CUPs and an Amended Plat noticed for the next meeting.

Adjourn: Commissioner Jensen moved to adjourn the meeting at 8:06 pm. Commissioner Parker seconded. Vote 3-0 aye.

Approved this day of , 2019

Flora Goheen
Planning Technician

Chairman