

**WHITEFISH PLANNING BOARD  
MINUTES OF MEETING  
April 15, 2021**

<p><b>CALL TO ORDER AND ROLL CALL</b></p>	<p>Vice Chair John Ellis called the regular meeting of the Whitefish Planning Board to order at 6:02 pm via WebEx videoconferencing. Board members present were Whitney Beckham (arrived at 6:12 pm), Scott Freudenberger, Allison Linville, and Toby Scott. Chair Steve Qunell and Chris Gardner were absent. Planning Director David Taylor and Long-Range Planner Hilary Lindh represented the Whitefish Planning and Building Department.</p> <p>There were three people attending in addition to the board members and staff.</p>
<p><b>AGENDA CHANGES</b> <i>6:02 pm</i></p>	<p>None.</p>
<p><b>APPROVAL OF MINUTES</b> <i>6:03 pm</i></p>	<p>Linville made a motion, seconded by Scott to approve the March 18, 2021 minutes without corrections. <b>The motion passed unanimously.</b></p>
<p><b>COMMUNICATIONS FROM THE PUBLIC HERE (ITEMS NOT ON THE AGENDA)</b> <i>6:04 pm</i></p>	<p>None.</p>
<p><b>OLD BUSINESS:</b> <i>6:04 pm</i></p>	<p>None.</p>
<p><b>PUBLIC HEARING 1: CARBONE CONDITIONAL USE PERMIT REQUEST</b> <i>6:05 pm</i></p>	<p>Mario and Cindy Carbone are requesting a conditional use permit to construct an accessory apartment atop a large single-car garage with storage. The property is currently developed with a single-family home and one-story accessory apartment and is zoned WR-2 (Two-Family Residential District). The property is located at 560 Columbia Avenue and can be legally described as Lot 4, Block 7 Riverside Add W, S36, T31N, R22W, P.M.M., Flathead County.</p>
<p><b>STAFF REPORT WCUP 21-06 (Osendorf)</b></p>	<p>Planner Lindh reviewed Planner Osendorf's staff report and findings. As of the writing of WCUP 21-06, one comment had been received in support of the proposal. Two additional comments in opposition were received this week and sent to the board. Concerns included</p>

	<p>the owners not living in the primary residence; increased traffic; size, height, bulk, and density of the proposed accessory apartment and garage; loss of privacy for neighbors; alley width; amount of lot covered by structures; setbacks; and parking issues on 5th and Columbia Avenues. Lindh said the owners do not have a local Whitefish address, but a condition is included that would require a deed restriction or restrictive covenant be recorded that the accessory apartment may only be rented if the owners maintain permanent residence in the primary structure.</p> <p>Staff recommended adoption of the findings of fact within staff report WCUP 21-06 and for <b>approval</b> of the conditional use permit to the Whitefish City Council.</p>
<p><b>BOARD QUESTIONS OF STAFF</b></p>	<p>Freudenberger asked how we address absentee owners. We know there is the typical deed restriction about not renting it unless the owner lives in the main residence, but what if they rent the house and have a loophole in the lease where the apartment comes with it and it is just free and part of it? Lindh said the apartment is not allowed to be rented unless the owners are living in the main house; however, it may be occupied without rent being charged. People may build accessory dwelling units for family members or house guests but not charge rent, and there are no restrictions if the owners choose to live in the accessory apartment and rent out the main house.</p> <p><i>Beckham joined the meeting at 6:12 pm.</i></p> <p>Scott asked if the owners could rent it out for six months and then move in; in other words, they say they live there, but they come up in June and leave in September or something like that. Would that allow them to rent out the apartment? Lindh said she believed it has to be their primary residence and Scott asked how we prove that. Lindh said she does not know how we would police that; we can only go with what the Code requires.</p> <p>Linville said based on the neighbors' comments, they will probably be interested in reporting that. She does not know if we should be looking over all the conditions, but maybe just consider the deed restriction and comments in their evaluation.</p> <p>Vice Chair Ellis said his understanding is that our restrictions just mean that they cannot rent out both places (the primary residence and the accessory apartment). They can live in either and rent the</p>

	<p>other one out, but he does not think anything requires them to be physically present in the primary place all the time. He asked and Director Taylor said that is correct, they can live in one or the other, the only restriction is that they cannot rent out the accessory apartment unless they maintain permanent residence in the other unit. It does not say "primary" it says "permanent" so they could potentially rent their house out for three months. He does not know how that would be policed, but they cannot rent the apartment out unless it is their primary residence and that is the only thing we can control.</p> <p>Scott asked if they have owned this house for a long period of time and Vice Chair Ellis said to ask the applicant later as Lindh did not know.</p>
<p><b>APPLICANT / AGENCIES</b></p>	<p>Applicant Mario Carbone said after reading the comments from the neighbors, he feels they should have been more proactive in putting down what their intentions are for the property. He and his wife Cindy are planning to move to Whitefish fulltime. They bought the property in October and it will be their primary residence. They have been accused of buying it sight unseen and being absentee landlords, but that is completely false. They are moving forward with two phases of planning and construction for the project; the first phase is the garage and apartment where they will live while building the main house which is the second phase. They are planning to do it this way purely because of cost and budgeting, and availability of construction resources in this area. There is so much growth right now it is difficult to build anything on time and on budget. He is in the construction business himself as part owner of a renewable energy construction company. Their intention is to be long-term neighbors. Whether they eventually rent out the room above the garage in the future remains to be seen but that is not part of their long-term plan. If it is just he and his wife and the apartment sits vacant, they may but if they end up with lots of family and visitors they probably will not. They are building a large garage as they have a lot of outside toys to store. They have a short-term goal of meeting the neighbors and introducing themselves and look forward to a long future in Whitefish. He also invited Mary Beth Stilwell, their friend and architect, to participate in the meeting to answer any questions. She has put the renderings and site plans together and they will be designing their structure to marry into the architecture of the neighborhood. They love downtown and Columbia Avenue and that is where they want to be.</p>

**PUBLIC COMMENT**

Vice Chair Ellis opened the public hearing. Holly Farver, 544 Columbia Avenue, said she received information regarding the City's policy on accessory apartments, and read from the Code, "The accessory dwelling may not be rented or leased as a separate residence unless the property owner maintains permanent residence in the primary dwelling," which answers the question that came up previously between board members. It also says, " Prior to issuance of an occupancy permit, the applicant shall provide the Zoning Administrator a recorded copy of a deed restriction or restrictive covenant with this language," so she assumes they cannot rent the main house while they are building the garage. Vice Chair Ellis said that would not be true, they may rent the main residence right now whether they are building the garage or not. Ms. Farver asked, and Vice Chair Ellis said the owners do not have to reside on the property to build the structure. As the owners of the main house, they have a right to make improvements to their property, and assuming the accessory apartment is permitted and they follow all the procedures, they can do so. Ms. Farver also has concerns with the lack of information regarding the floor plan, elevations, orientation of windows, doors, and decks and how they affect the privacy of neighboring properties. Vice Chair Ellis said his understanding is that at this point in the process they do not have to present any plans of what it looks like. Lindh said the drawings, including the floor plans and elevations, were provided as part of the application in the packet, and available by looking at the hyperlink in the Planning Board agenda. She walked Ms. Farver through how to access drawings, etc., via the meeting agenda.

Freudenberger said this project will need to go through Architectural Review and would not pass without windows on the sides. Lindh said we are not looking at the design of the building right now, we are looking at the use. The building drawings will have to come to the Building Department for review and staff will determine the height, setbacks, etc., are being met before a building permit is issued. Architectural Review is no required for an accessory apartment like this. The CUP is not intended to be a design critique.

Vice Chair Ellis said we are not here to debate this; we are here for Ms. Farver and any others to make any comments for or against the project. We are not here to discuss the design; we are here to see if this request for an accessory apartment meets the criteria in our City Code as far as the zoning. Since this is a conditional use, it has to meet certain criteria which has been laid out in the report, and that is what any comments should pertain to. Ms. Farver said these are her

	<p>concerns regarding verbiage that is included in this decision-making process and how it impacts the neighborhood and privacy even at this stage. Vice Chair Ellis thanked her for her comments.</p> <p>Vice Chair Ellis gave Mr. Carbone the opportunity to comment, and he had nothing further to add.</p> <p>There being no further comments, Vice Chair Ellis closed the public hearing and turned the matter over to the Planning Board for consideration.</p>
<p><b>MOTION / BOARD DISCUSSION</b></p>	<p>Scott made a motion, seconded by Beckham, to adopt the findings of fact within staff report WCUP 21-06, with the seven (7) conditions of approval, as proposed by City Staff.</p>
<p><b>VOTE</b></p>	<p><b>The motion passed unanimously.</b> The matter is scheduled to go before the Council on May 3, 2021.</p> <p>Linville wanted to make sure while the public was still in attendance to acknowledge, understand, and have high regard for the public comment, but our consideration is primarily the zoning and Code. That is the bounds of this decision-making process, but we really appreciate neighborhood involvement and comments and understand those concerns as well as looking at the zoning and Code for this.</p> <p>Beckham also appreciates the public being involved, and letters, whether in favor or opposed to these accessory apartments, are really important because that is what we are getting the most of right now. The Planning Board is looking at how to handle these in the future, so the public should know this is something we are looking at very seriously. The public comments could really affect whether this is a more streamlined process, or something looked at more closely. It is also important to recognize these accessory apartments can in fact preserve neighborhoods, instead of demolishing the existing houses and creating a whole new building. Accessory apartments in some areas can actually leave the neighborhood intact, so we need to look at both sides of that, and we appreciate the comments.</p> <p>Scott added the area is zoned WR2 and anyone who buys a piece of property there could build a duplex and it could look like anything that gets approved by the Architectural Review Committee.</p>
<p><b>PUBLIC HEARING 2:</b></p>	<p>Douglas and Kelly Peppmeier are requesting a Conditional Use Permit</p>

<p>PEPPMEIER CONDITIONAL USE PERMIT REQUEST <i>6:37 pm</i></p>	<p>to construct an accessory apartment over a new garage. The property is currently developed with a single-family home and is zoned WR-2 (Two-Family Residential District). The property is located at 815 E. Second Street and can be legally described as Whitefish Original W 6.25' of Lot 6, Lots 7, 8, 9 Block 48 in S36, T31N, R22W, P.M.M., Flathead County.</p>
<p>STAFF REPORT WCUP 21-05 (Lindh)</p>	<p>Planner Lindh reviewed her staff report and findings. No public comments have been received.</p> <p>Staff recommended adoption of the findings of fact within staff report WCUP 21-05 and for <b>approval</b> of the conditional use permit to the Whitefish City Council.</p>
<p>BOARD QUESTIONS OF STAFF</p>	<p>Vice Chair Ellis asked for an explanation of the lot lines, and Lindh said normally a house is on a single lot but this property is comprised of three lots altogether. They have not had the interior lot lines removed though the main house spans all three lots. To determine setbacks, they look at where the external lines are, so the interior lot lines need to be removed.</p> <p>Scott said the Staff Report indicates there is a portion of a fourth lot and Lindh said there are three lots and a sliver, and all will be combined into one lot.</p>
<p>APPLICANT / AGENCIES</p>	<p>Doug Peppmeier, 815 E. 2nd Street, said Hilary did a great job on the Staff Report and he agrees with all the findings of fact.</p>
<p>PUBLIC COMMENT</p>	<p>Vice Chair Ellis opened the public hearing. There being no public comment, Vice Chair Ellis closed the public hearing and turned the matter over to the Planning Board for consideration.</p>
<p>MOTION / BOARD DISCUSSION</p>	<p>Scott made a motion, seconded by Freudenberger, to adopt the findings of fact within staff report WCUP 21-07, with the eight (8) conditions of approval, as proposed by City Staff.</p>
<p>VOTE</p>	<p><b>The motion passed unanimously.</b> The matter is scheduled to go before the Council on May 3, 2021.</p>
<p>NEW BUSINESS <i>6:43 pm</i></p>	<p>None.</p>
<p>GOOD AND WELFARE</p>	<p>1. Matters from Board. Beckham said she feels on the first accessory apartment that we almost skipped the discussion from the</p>

6:43 pm

board and was glad Linville interjected. She feels that is something the board needs to preserve, especially with accessory apartments. When the public is interested and present it is important the board members let them know they are heard, and their opposition is recognized. She felt the board did a good job tonight of saying this is a zoning issue, here is the law, here is how we are following it, and here is how you can report after, but it needs to be transparent that board members do care about these neighborhoods. She wants the board to be careful not to accidentally skip over that; she wants to tell people we read your letter, we hear you, and thank you for caring. Vice Chair Ellis thanked Beckham and apologized for not asking for discussion; he said in the future to interrupt him if he forgets something.

2. Matters from Staff. Director Taylor said there is a committee looking at the accessory apartment regulations. He said it is appropriate for Planning Board members to consider whether there are too many windows looking down on a side yard and possibly include a condition to limit how many or the size of windows. Some designs necessitate a certain size of windows. If it is egress or the only window in a bedroom, we have to allow a window per our Fire Code so people can exit. The Housing Committee has been looking at accessory apartment regulations and may have design standards regarding where decks and the majority of windows can be located, etc., so it is in the board's purview to look at that type of thing. But also, be cautious about not getting into a question and answer session during public comment. The public is supposed to comment and not get into a back-and-forth dialogue.

Vice Chair Ellis said it is his understanding that applicants do not even have to submit any plans or drawings at this stage of the process, and Director Taylor said it is very helpful if they do. Staff wants to be able to look at the floor plan and measure what the square footage is to ensure it is under 600 square feet. Building elevations help them make sure it is within the right height. They definitely try to make sure there are plans so they can review those items, as well as the relationship to the garage. It is within the purview of the board to look at those details and add conditions it feels are necessary to mitigate the concerns of neighbors. Vice Chair Ellis asked by the time it gets here, isn't it too late, and Director Taylor said no. Plans, drawings, etc., are all included so board members need to be sure to look at everything that is in the packet. Lindh pointed out a document called "Exhibit List" is included with each project which includes everything that should be reviewed.

	<p>3. Poll of Board members available for the next meeting on May 20, 2021. All members indicated they thought they would be available.</p>
<p><b>ADJOURNMENT</b> <i>6:51 pm</i></p>	<p>Scott made a motion, seconded by Freudenberger, to adjourn the meeting at approximately 6:51 pm. The next regular meeting of the Whitefish Planning Board is scheduled to be held on May 20, 2021, at 6:00 pm, via WebEx videoconferencing.</p>

*/s/ Steve Qunell* \_\_\_\_\_  
Steve Qunell, Chair of the Board

*/s/ Keni Hopkins* \_\_\_\_\_  
Keni Hopkins, Recording Secretary

APPROVED AS SUBMITTED / CORRECTED: 5-20-21 \_\_\_\_\_