

McCALL AREA
PLANNING AND ZONING COMMISSION

Special Meeting Agenda
July 18, 2017 – 5:30 p.m.
McCall City Hall – Lower Level
216 East Park Street
McCall, ID 83638

COMMISSION MEETING – Began at 5:30 p.m.

1. CALL TO ORDER AND ROLL CALL

Chair Fereday, Commissioner Farnsworth, Commissioner Thompson, Commissioner Callan, Commissioner Clements, and Commissioner Williamson were present. City Planner Delta James, Permit Technician Morgan Bessaw, and City Engineer Philip Bowman were also present.

2. NEW BUSINESS

CUP-17-03

925 Conifer Ln.

Millemann, Pittenger and Pemberton LLC representing the Tuft Family Revocable Trust: A Conditional Use Permit application for a large short term rental sleeping 20 or more individuals. The property is zoned R4 – Low Density Residential and is more particularly described as: McCall Acreage Tax No. 45, NW1/4, SW1/4, Section 3, T18N, R3E, BM, City of McCall, Valley County, Idaho.

PUBLIC HEARING

Steve Millemann of Millemann, Pittenger, and Pemberton LLP presented the application for a Conditional Use Permit for short term rentals sleeping 19 or more people. The land use is a preexisting use, predating both the State of Idaho ordinance on rentals as well as the City of McCall Ordinance on large short term rentals. The state recently adopted House Bill 216, which limits City jurisdictions' ability to regulate short term rentals. While the City of McCall ordinance does not prohibit large short term rentals, it allows reasonable conditions to be imposed that mitigate the use on the surrounding neighborhood.

Mr. Millemann continued by stating that the applicant has proposed and implemented several mitigating conditions that will hopefully lessen the impact on the surrounding neighborhood. If the applicant were to reduce the number of people sleeping in their short term rental to 19 individuals or less, no permit or mitigating actions would be required. In response to the principle concerns presented during this process, the applicant is in the process of constructing a sight obscuring fence along both side property lines. They have planted landscaping along and to the north of the patio to help soften the noise to the neighboring properties and to shield the patio from view. The residence is reasonably well screened from Strawberry Ln.

The applicant is also proposing quiet hours and banning any music or amplification outside of the house at all hours. Several letters received from neighbors expressed concern about dogs roaming the neighborhood. New rules prohibit pets from being on the property. One condition of approval requires that property management be available around the clock seven days a week and that

phone numbers for management be distributed to all neighbors within 500 ft. of the property so that the police are not the only people available to address issues that may arise.

The issue of increased traffic and limited parking has also been raised by multiple neighbors. A site plan has been created to help address these issues. The plan call for a new one way ingress and egress. All parking on Conifer Ln. has been removed and parking must be consistent with the proposed site plan. Policy allows for one warning of violation, after which the renters may be evicted. The only condition the applicant is contesting is Condition 4 limiting the number of nights a year that the applicant can sleep 20 or more people to 75% of the occupied nights.

The fence stops halfway down the property on the west due to trees. If the commission would like the fence to continue some trees will need to be removed. The old parking area on the south may need to be blocked off to prohibit vehicles from parking.

Ms. James presented the staff report and conditions. The building official and the fire marshal have both stated that there are not occupancy limits on the structure that would limit the use. The property has also developed fire safety measures. The proposed Condition 4 limiting the applicant to only sleeping 20 or more individuals to 75% of the occupied nights will be monitored and enforced on an annual basis based on the information submitted through the Local Option Tax process quarterly.

Bill Nichols, City Attorney, presented a power point on HB 216 and issues related to short term rentals in communities that was borrowed from Jerry Mason and the Association of Idaho Cities and is included in the meeting packet.

The public hearing was opened.

Emmett Price, resident of 602 E. Thompson Ave., spoke in favor of the application. The applicant has agreed to the suggestions the City has made and are willing to address issues that arise, they have even moved to town to manage the property full time.

Dick Stones, resident of 3609 Fox Run, New Meadows, spoke in favor of the application. The lodge is beneficial to large families as a space to host family events. The lodge should also be allowed because the use predates the code change.

The applicant, Frank Tuft, 925 Conifer Ln., spoke in favor of the application.

Rick Farmer, 607 Lick Creek Rd., spoke favor of the application. The Tufts are trying hard to address all of the neighbors' concerns.

Julia Thrower, resident of 917 Conifer Ln. and attorney representing herself and nine other property owners in the neighborhood spoke against the application. Ms. Thrower stated that the law doesn't require a permit be issued in this case because the applicant does not meet the requirements for a Conditional Use Permit. She disagrees with the applicant's representative's claim that they are a grandfathered use and therefore cannot be denied a permit. The law only requires grandfathered uses not be abruptly terminated, and limiting the use to sleeping only 19 people would not constitute termination.

Based the information submitted by the applicant stating that the property slept 20 or more people 75% of the nights it was rented was based on information from 2015 and 2016, which occurred after the enactment of the ordinance on in December 2014. No information on the size of the groups renting the property prior to when the ordinance was enacted was provided to determine the preexisting use.

Ms. Thrower continued by stating that this application does not meet the criteria required for issuing a Conditional Use Permit, which is that the use is harmonious with the character of the neighborhood. The neighborhood is quiet and residential, primarily used full time or by families. Few short term rentals are located on the street. Additionally, the outdoor patio can accommodate 30 people, which can generate a large amount of noise. Parking is another issue that disrupts the neighborhood. There is concern that the proposed parking plan will not adequately address the current parking issue and that it is unlikely that renters will adhere to the parking plan. The parking conditions also fail to address buses, RVs, trailers, etc. Conditions to address the parking and noise will also be difficult to enforce. The conditions proposed are not sufficient to protect the welfare of the neighborhood or to make the use harmonious with the neighborhood. Police reports from that property were passed around and are attached to the minutes demonstrating issues that have arisen with that property in the past.

Karen Dittrich, owner of 932 Strawberry Ln., spoke in opposition to the application. She is concerned about the number of strangers and the safety of the neighborhood having a short term rental of that size.

Gail Bray spoke in opposition. She has served on a county planning and zoning commission as well as at the state level and has a strong understanding of local governance. She feels McCall is shirking its responsibility in addressing the issue. The commission should be more concerned about comments opposed to the application submitted by residents of the neighborhood than the comments received from non-resident supporting the application.

Nancy Bush, 938 Strawberry Ln., spoke in opposition to the application.

Ken Krahn, 907 strawberry Ln., spoke in opposition to the project. As a homeowner on Strawberry Ln. he is concerned about the amount of traffic generated by the lodge and the safety issues this poses. The lodge has hosted events such as weddings, receptions, family reunions, etc. which have generated large amounts of traffic and do not meet all the conditions required for the conditional use permit. He also feels that the proposed use negatively affects the adjacent property values and that there is a need to limit the number of people the lodge sleeps.

Pamela Fitzsimmons, 934 Flynn Ln. spoke in opposition to the application. There is currently no onsite property manager available 24 hours a day, seven days a week which makes the proposed conditions difficult to enforce. The neighbors have not been given a phone number for contacting the person responsible for managing the property. Other concerns include the garbage container being noncompliant as well as snow removal and storage impacting available parking.

Peter Fitzsimmons, 934 Flynn Ln., spoke in opposition to the application. The lodge is loud and disruptive, he has heard parties from his house located a street over. He is also aware of groups and events at the lodge that had well over 35 people. He does not feel that the application meets all of the criteria required for a conditional use permit.

Janelle Wise, resident of 935 Flynn, was opposed to the application due to noise.

Jens Jensen, resident of 823 Ernesto, was in favor of the application.

Art Troutner, owner of 943 Strawberry Ln., spoke against the application. His property has been in the family since the 1960s and has historically been a quiet neighborhood. The noise and traffic generated are a problem and destroy the quality of life in the neighborhood.

Chris Justice, resident of 932 Strawberry Ln., spoke against the application. The noise is very disruptive. There is a game room indoors that generates a large amount of noise. The use is consistent with a hotel, not a residential use. He is vehemently opposed to the permit.

Mark Tapscott, resident of 928 Strawberry Ln., spoke in opposition to the application. The statement made earlier that McCall Fire has no objection is incorrect, rather no comment was issued. He disagrees that the proposed parking plan is adequate. The plan only allows 9 vehicles, which is less than have arrived in the past. The burden of enforcement also lays with the neighbors. The landscaping and snow storage plans are conflicting.

Steve Millemann readdressed the Commission regarding issues brought up during public comment. There have obviously been past problems, however, new mitigating efforts should address some of the concerns brought forward. There were no conditions to comply with prior to this process and the applicant is in compliance with the rules that were in place at the time the use went into place. Independent of House Bill 216, preexisting uses are protected. The historical record goes beyond the 2 years postdating the ordinance. The Tufts have participated in good faith since the ordinance went into effect and have provided a tangible and enforceable mitigation plan. The City does not have a noise ordinance. He encouraged the Commission to not assume that past parking problems translates into future problems now that there are conditions addressing this issue. The applicant still intends to have video surveillance installed around the exterior of the property to help enforce compliance without requiring the neighbors to complain.

Bill Nichols, City Attorney, addressed the Commission. The number of nights in 2015 and 2016 the lodge slept 20 or more people was approximately 160 nights per year. The applicants, Frank and Kitty Tuft, will be available 24 hours a day seven days a week to manage the property. Case law does not necessarily support the comment that nonconforming uses are encouraged to stop over time. There is also a difference between the enlargement of a use and the intensification of a use. The Conditional Use Permit can be revoked if the property owner does not comply with the conditions agreed upon. A revocation would not prohibit the short term rental use but rather limit the rental to sleeping only 19 people. Enforcement has historically been through evidence provided via code enforcement or neighbor complainants.

The public hearing was closed.

The Commission discussed the application and the strong neighbor turnout to oppose the rental. They commented that the application did not offer to monitor noise, which other applications for large short term rentals have offered. The applicant is well intentioned and making mitigating actions, but the use does not work well in the current location. They would like to see something to prevent parking on the Conifer Ln. side of the property, such as a revegetation. Other concerns were

whether the management plan was appropriate and what actions the Commission can legally take to regulate this rental. Reducing the occupancy would need to be based on the evidence available to the Commission. The Commission discussed what an appropriate cap on occupancy might be for the property and, given the parking limitation of 9 vehicles, that a maximum occupancy of three (3) persons per vehicle as an average for a total maximum occupancy of 27 would be appropriate.

New and modified conditions were proposed as follows:

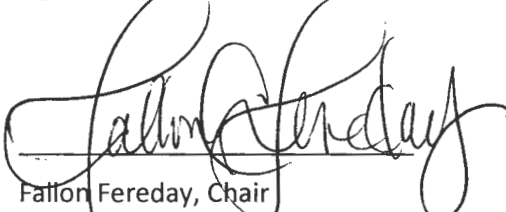
- The applicant shall install and monitor video surveillance and external and internal decibel meters to ensure adherence with the conditions of approval.
- Prior to City Council review of the Conditional Use Permit application, the applicant shall submit a comprehensive management plan for the short-term rental use of the property that includes written procedures detailing steps, response timelines and enforcement actions that will be taken to address violations of the conditions of approval and rental policies.
- The maximum occupancy for overnight stay on the property shall not exceed twenty seven (27) individuals. Guests who are not staying overnight are not included in the lodging occupancy.
- When the property is rented, vehicle parking shall be limited to nine (9) total vehicles; seven (7) within the graveled onsite parking area and two (2) within the garage. No parking of trailers, recreational vehicles or buses shall be allowed. No expansion of parking area shall be permitted and no parking shall occur within the public rights of way of Strawberry Lane or Conifer Lane.
- Refuse containers shall be located within a building.
- Prior to City Council review of the Conditional Use Permit application, the applicant shall submit a revised landscaping plan that includes features to discourage parking within the south portion of the property accessible from Conifer Lane.

Commissioner Williamson made a motion to recommend the application to City Council for approval with the modified conditions as described and with a second public hearing. Commissioner Callan seconded the motion. All commissioners voted aye and the motion carried.

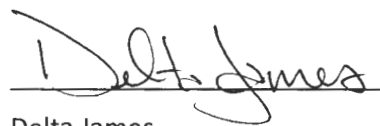
3. ADJOURNMENT

Commissioner Callan made a motion to adjourn the meeting at 8:30 PM. Commissioner Farnsworth seconded the motion. All commissioners voted aye and the motion carried.

Signed: September 5, 2017 -


Fallon Fereday, Chair
McCall Area Planning and Zoning Commission

Attest:


Delta James
City Planner