

**WHITEFISH PLANNING BOARD  
MINUTES OF MEETING  
January 21, 2021**

<p><b>CALL TO ORDER AND ROLL CALL</b></p>	<p>Chair Steve Qunell called the regular meeting of the Whitefish Planning Board to order at 6:00 pm via WebEx videoconferencing. Board members present were Whitney Beckham, John Ellis, Scott Freudenberger, Chris Gardner, Allison Linville, and Toby Scott. Planning Director David Taylor, Senior Planner Wendy Compton-Ring, and Planner II Tara Osendorf represented the Whitefish Planning and Building Department.</p> <p>There were approximately five people attending in addition to the board members and staff.</p>
<p><b>AGENDA CHANGES</b> <i>6:01 pm</i></p>	<p>None.</p>
<p><b>APPROVAL OF MINUTES</b> <i>6:01 pm</i></p>	<p>Scott moved, and Linville seconded to approve the December 17, 2020 minutes with a correction requested by Freudenberger. <b>The motion passed unanimously.</b></p>
<p><b>COMMUNICATIONS FROM THE PUBLIC HERE (ITEMS NOT ON THE AGENDA)</b> <i>6:07 pm</i></p>	<p>None.</p>
<p><b>OLD BUSINESS:</b> <i>6:07 pm</i></p>	<p>None.</p>
<p><b>PUBLIC HEARING 1: LIQUID LIBRARY, LLC CONDITIONAL USE PERMIT REQUEST</b> <i>6:08 pm</i></p>	<p>A request by Emily Rindal, on behalf of Liquid Library, LLC, for a Conditional Use Permit for a new restaurant with a beer/wine license in Suite 101 of the new commercial building at 206 Lupfer Ave. The property is zoned WB-3 (General Business District) and can be legally described as Lot 1, Block 42 Whitefish Subdivision in S36 T31N R22W, P.M.M., Flathead County.</p>
<p><b>STAFF REPORT WCUP 21-01 (Osendorf)</b></p>	<p>Planner Osendorf reviewed her staff report and findings. As of the writing of WCUP 21-01, no public comments had been received, and no comments have been received since.</p> <p>Staff recommended adoption of the findings of fact within staff</p>

	<p>report WCUP 21-01 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>Scott asked and Osendorf said she did not find anything in our Code setting decibel restrictions other than what she included in Condition No. 5. There is no definition of what an "insignificant level" is, and reference is made to prerecorded music only, not live.</p> <p>Director Taylor added we do not set a decibel level as it is hard to measure with road noise, etc., so complaints are treated in our Code as disturbing the peace, which is a police matter.</p> <p>Freudenberger asked and Director Taylor said a conditional use permit is required per our Code because of the type of liquor license the Applicant has.</p> <p>Chair Qunell asked and Osendorf clarified the location of the building.</p>
<p><b>APPLICANT / AGENCIES</b></p>	<p>Emily Rindall, PO Box 473, Seeley Lake, said they plan to serve beer, wine, fun non-alcoholic drinks, and a simple food menu. They will be a classy addition to downtown and give another option to people looking for a place to hang out, eat, and drink.</p>
<p><b>PUBLIC COMMENT</b></p>	<p>Chair Qunell opened the public hearing and no one wished to speak. Chair Qunell 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 moved and Beckham seconded to adopt the findings of fact within staff report WCUP 21-01, with the six (6) conditions of approval, as proposed by City Staff.</p> <p>Scott said it appears to be a pretty straightforward application and he sees no reason not to approve it.</p> <p>Beckham said it is fitting for the area now that the huge building is there and exactly what she would expect to see at that location. A restaurant closing at 10:00 pm will be good for the neighbors.</p> <p>Chair Qunell said it will be perfect to have another place to grab a beer, wine, and/or food right downtown, and hopefully they will incorporate outdoor seating.</p>

VOTE	<p>The motion passed unanimously. The matter is scheduled to go before the Council on February 1, 2021.</p>
<p><b>PUBLIC HEARING 2: FEENY CONDITIONAL USE PERMIT REQUEST</b> <i>6:21 pm</i></p>	<p>A request by Curtis and Christine Feeny for a Conditional Use Permit to construct an accessory apartment above an existing garage. The property is currently developed with a single-family home and detached garage and is zoned WR-1 (One-Family Residential District). The property is located at 1656 W. Lakeshore Drive and can be legally described as Lot 7, Block 2 Lake Park Addition, S36 T31N R22W, P.M.M., Flathead County.</p>
<p><b>STAFF REPORT WCUP 21-02 (Compton-Ring)</b></p>	<p>Senior Planner Compton-Ring reviewed her staff report and findings. As of the writing of WCUP 21-02, no public comments had been received, and no comments have been received since.</p> <p>Staff recommended adoption of the findings of fact within staff report WCUP 21-02 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>Chair Qunell said the owner of the property is Curtis Feeny whose address is listed as Park City, Utah. He asked and Compton-Ring said Mr. Feeny will need to reside in the home or accessory apartment if he wants to rent out the other, but if not renting one out, he does not need to live there. Chair Qunell asked and Compton-Ring said the City's enforcement of that restriction would be complaint driven. Chair Qunell asked about the building height needing to be reduced (Condition No. 4) and setbacks needing to be met (Condition No. 5) mentioned in Staff Report WCUP 21-02 and Compton-Ring agreed.</p> <p>In light of the deed restriction, Gardner asked about the remedy if the owner did not live at the property and Compton-Ring said if there was a complaint, the City's Code Enforcement Officer would investigate and if the owner did not come into compliance, it would be turned over to the City Attorney. The CUP could also be revoked. Chair Qunell asked and Compton-Ring said if that happened, it could no longer be an accessory apartment, and no one could live there.</p>
<p><b>APPLICANT / AGENCIES</b></p>	<p>David Barnes, the applicant's representative, spoke on behalf of the Applicant. He said the existing garage is 624 square feet and the addition for the accessory apartment will sit on top of that and be less than 600 square feet. The garage was built in 1996 and he asked if there was any type of grandfathering clause for the existing garage. Compton-Ring said the footprint of the garage has to be 600 square feet or less to have a yard setback of six feet; if more than 600 square</p>

	<p>feet, the standard is 10-feet, and any expansion of the structure must meet the 10-foot side yard setback. The applicant's choices are to step back the upper floor of the accessory apartment to meet the 10-foot, reduce the footprint of the garage to 600 square feet or less or apply to the Board of Adjustment for a variance.</p> <p>Mr. Barnes said the accessory apartment will not be rented; it is intended for family use and the apartment will be occupied when the house is occupied, whether the owners are fulltime residents or not.</p> <p>Chair Qunell said the garage footprint is 624 square feet, which would require a ten-foot setback, and since they only have a seven-foot, four-inch setback, that does not work. Compton-Ring said the setbacks will have to be met at the time of application for a building permit.</p> <p>Ellis asked if they are fine if the addition is kept to 600 square feet, and Compton-Ring said according to the nonconforming use section of the WCC, the residential garage is fine, but when added to it must conform to the setback requirements, even vertically.</p> <p>Mr. Barnes asked, and Compton-Ring said if they moved the wall of the existing garage along the side of the property in two feet eight inches, they would conform as long as the apartment remains 600 square feet or less.</p> <p>Freudenberger suggested a boundary line adjustment might also solve the problem if they could obtain one from the neighboring lot owner or if the Applicant owns both lots. Mr. Barnes said another family member owns the lot next door so that might be a possibility, though he could not say for sure.</p> <p>Scott asked and Compton-Ring said the current structure is grandfathered, but when an expansion or alterations, it has to conform to the setback requirements.</p> <p>Following further discussion, Compton-Ring suggested the "If" be removed from the beginning of the sentence in Condition No. 5. Beckham suggested "therefore" be added after the comma to make a complete sentence.</p>
<p><b>PUBLIC COMMENT</b></p>	<p>Chair Qunell opened the public hearing and no one wished to speak. Chair Qunell 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 moved and Linville seconded to adopt the findings of fact within staff report WCUP 21-02, with the eight (8) conditions of approval, as proposed by City Staff.</p> <p>Scott moved and Ellis seconded to change the wording of Condition No. 5 to read, "[T]he accessory building footprint exceeds 600 square feet, therefore the second-floor accessory apartment must meet primary building side yard setback of 10-feet." Chair Qunell asked and Compton-Ring said that gives the Applicant the option to either step in the existing building or get a boundary line adjustment before time of building permit.</p> <p>The motion to amend Condition No. 5 passed unanimously.</p>
<p><b>VOTE</b></p>	<p><b>The main motion, as amended, passed unanimously.</b> The matter is scheduled to go before the Council on February 1, 2021.</p>
<p><b>PUBLIC HEARING 3: BTG INVESTMENTS, LLC PRELIMINARY PLAT REQUEST</b> <i>6:52 pm</i></p>	<p>A request by BTG Investments, LLC for a preliminary plat approval to subdivide a property into two lots. The property is currently undeveloped and zoned WLR (One-Family Limited Residential District). The property is located at 610 Hilltop Court and can be legally described as Amended Lots 26 &amp; 27 Grouse Mountain Estates, Phase 2 in S35 T31N R22W, P.M.M., Flathead County.</p>
<p><b>STAFF REPORT WPP 21-01 (Compton-Ring)</b></p>	<p>Prior to the meeting, the Applicant requested to postpone the hearing on this matter to the February 18, 2021 Planning Board meeting.</p>
<p><b>NEW BUSINESS</b> <i>6:52 pm</i></p>	<p>None.</p>
<p><b>GOOD AND WELFARE</b> <i>6:52 pm</i></p>	<p>1. Matters from Board. Scott asked what can be done about noncompliance by certain applicants, such as where the Town Pump cut down 12 old-growth trees at Highway 40, and the historic building that was promised to be moved at the corner of Lupfer Avenue and E. 2nd Street and then the beams were cut so it had to be torn down instead. He is tired of it and would like the Planning Board to consider recommending some sort of penalty to the City Council. He would be in favor of jail time as money is not enough of a deterrent for some rich people.</p> <p>Chair Qunell said a penalty is being put in place by the City Council for the Town Pump fiasco requiring them to plant 22 new</p>

trees that are the largest they can find locally. In terms of what happened with the other building, that is a good question. The Councilors are invested in trying to set up an historical preservation fund to protect buildings like that although there are not that many left, and a tree preservation fund could also be considered, but there are many priorities, so funding is tough. They are talking about it at the Council level, but it is difficult to hold people responsible for not doing what they say they are going to do. What happened at Town Pump is inexcusable, but we will have nicer trees in the end with more low branches if that is any consolation.

Linville said she tries to rely on the written documents submitted rather than get caught up in what is said at a meeting when applicants are trying to pitch their project, as all they are held to legally is their application. We need to stick to what is on paper, what the zoning is, and what the application says. She also brought up the issue of the 108 Airbnb units at the Quarry versus what they said they planned to build.

Director Taylor said saving the historic house at E. 2nd Street and Lupfer Avenue was not a condition of approval, so they did not really violate anything. Freudenberger said he was working with Mark Panissidi at the time and Mr. Panissidi was definitely planning to move the house.

Chair Qunell said at some point we have to trust people and when we do, we will sometimes get burned; it is an unfortunate fact of life. Some applicants will promise you the world and then you get something like the 108 pillboxes at the Quarry.

Scott said he is sure the City Council is trying to do everything it can about the Town Pump issue and Chair Qunell said the Town Pump has told City Council it will do everything it can to make it right.

Gardner asked when we approve a CUP, looking at it from a neighbor's perspective, how do we enforce it if the applicant does not tell the truth. Chair Qunell said enforcement is always a problem. It has been hard to enforce the mask mandate and it is hard to enforce short-term rentals. It is complaint driven and we do not have a vast network of people who go out and check up on rules like that. One remedy is that in order to be able to rent something you have to have a business license which can be pulled if someone does not comply. We cannot catch everyone, but we do the best we can.

2. Matters from Staff. None.

3. Poll of Board members available for the next meeting on February 18, 2021. All members indicated they thought they would

	be available. Compton-Ring said the only thing on the agenda will be the application that was postponed from tonight (BTG Investments LLC preliminary plat, WPP 21-01).
<b>ADJOURNMENT</b> <i>7:00 pm</i>	The meeting was adjourned on a motion by Linville at approximately 7:00 pm. The next regular meeting of the Whitefish Planning Board is scheduled to be held on February 18, 2021, at 6:00 pm, at 418 East 2nd Street.

*/s/ John Ellis, Vice Chair*

John Ellis, Vice Chair

*/s/ Keni Hopkins*

Keni Hopkins, Recording Secretary

APPROVED AS SUBMITTED / CORRECTED: 3-18-21