



RECORD OF PROCEEDINGS

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**Meeting of the Planning Commission for the Town of Frisco**  
**Virtual Meeting (<https://global.gotomeeting.com/join/172145269>)**  
**Thursday, May 21, 2020 at 5:00 P.M.**

**Call to Order:** Andy Stabile, Chair, opened the meeting.

**Roll Call:** Robert Anton Franken, Jason Lederer, Lina Lesmes, Donna Skupien, Andy Stabile, Kelsey Withrow  
Absent: Andy Held (now on Town Council)  
Lina Lesmes left the meeting at 5:30 p.m. (prior to vote)

**Minutes:** The May 7, 2020 Planning Commission meeting minutes were approved unanimously.

**Public Comment (non-agenda items):**

Brad Hovis, Owner of Hotel Frisco, 308 E Main Street, questioned whether the Rainbow Court project is going to be discussed.

Commissioner Stabile responded yes, the Rainbow Court project is on tonight's agenda and will be open for comments later in the meeting.

**Agenda Items:**

1. **Planning File No. 017-20-MOD:** A public hearing of modifications to the approved Major Site Plan Application (238-18-MAJ) for the Rainbow Court East Building mixed-use project, located at 310 East Main Street / Lots 3-5, Block 9, Frisco Townsite. Applicant: Myra Mesko, MM Properties LLC; represented by Michael Shult Architect

Community Planner, Katie Kent, presented the staff report to the Commission. Kent noted that the Planning Commission approved the Development Application for the Rainbow Court East Building in May 2019. The approval is still valid however, the owner has chosen to modify the project to improve the functionality of the space and alter the exterior design. A foundation only permit has been issued and work has begun but has not been completed. A building permit application has been submitted, but a permit has not been issued since the applicant is requesting site modifications before the Planning Commission. Kent reviewed the staff report noting proposed modifications and referencing the Community Plan, Central Core District, Use Standards, and Non-Residential Development Standards, parking, landscaping and lighting requirements. Kent noted the Public Comments received prior to the meeting and distributed to the Planning Commission members via email along with posts on the website, which include:

- Chad McIntire (Represented by Fred Sprouse – Attorney at Law) 320 E Main St #202 dated 5.8.2020
- Andrew Schmit (Represented by Fred Sprouse – Attorney at Law) 320 E Main St #201 dated 5.19.2020
- The Frisco Hotel (Represented by C. J. Conant – Attorney at Law) 308 E Main St dated 5.20.2020

- Frisco Market Place Association and Owners (Represented by Fred Sprouse – Attorney at Law) 320 E Main St dated 5.21.2020
- Myra Mesko, MM Properties (Represented by Steven O’Connor – Attorney at Law) dated 5.21.2020

Kent stated that some of the claims in the public comment have more to do with a civil matter between private parties than the merits of the application. The Planning Commission is to review the project in reference to the Unified Development Code. Elements between private property owners, including outstanding payments to each other, private contracts, etc. are not within the Planning Commission’s scope of review.

**Commission questions for staff included:**

- Commissioner Withrow questioned the approval process and since this is a modification and if it gets approved, does that restart the timeline on the whole application? Staff responded yes, it would be effective 3 years from date of approval.
- Commissioner Withrow questioned why the accessible parking spot has non-conforming snow storage? Kent replied that it is because there was never snow storage on the site in the back. Commissioner Withrow asked why this is not a requirement? Staff replied because it was “grandfathered”.
- Commissioner Lederer asked staff if the Commission is only reviewing and commenting on the proposed changes to the project, or if they comment on the project itself? Staff responded that the Commission is to comment on the project itself.
- Commissioner Franken asked if since there have now been changes to the back building which weren't included in the last approval, wouldn't the non-conforming snow storage now not be grandfathered in since we're changing the entire back of that property? Staff responded that yes but it was all pavement with roof overhangs and it's going to continue to be all pavement and they're reducing the requirement for snow storage on the property by adding the garages.
- Commissioner Franken expressed concern over the removal of the elevator and asked if there is any requirement for that elevator? Staff replied not according to the architect for the proposed uses, but Staff will let the architect address that during his presentation.
- Commissioner Franken questioned the dining in the courtyard, will that take away from the public courtyard use? Kent responded that the dining was just a portion of the courtyard and it wouldn't take up the entire courtyard. Further, that's where the rest of the open area and the two bicycle racks are so it will still be considered public and open to the community. Kent suggested they ask the applicant to address. Commissioner Franken commented that it would seem like that part of the courtyard would be in the front, near the Main Street, which would keep people from going in and utilizing the courtyard during those times.
- Commissioner Skupien expressed her biggest concern is that there is no ADA elevator – just a ramp from the handicap parking spot to the courtyard. Staff replied that this would be something the architect could address since it is based on different uses and is not a Planning Commission review. Commissioner Skupien also noted that elevations on 3.2 are mislabeled and need to be corrected.
- Commissioner Stabile questioned whether there are a couple of spots in front of the garages that are counting as unit spots and those spots would be tied to that particular unit? Staff responded correct that they would have to be assigned to the same unit that has that garage parking because it would be a tandem parking space.
- Commissioner Stabile questioned the staff report which states that the roof meets the roof standards for non-residential development standards and if it does meet the current code. There was a discussion over code and whether this meets the letter of the code. Staff suggested the Planning Commission discuss for a future code amendment.
- Commissioner Withrow questioned whether the procedural bulk plane encroachment is now enclosed as a protruding bay window? It seems like it is an extensive modification that we're not having a sketch plan discussion on if that is the case. Staff responded that is part of what is being reviewed tonight for

the modification. Bill Gibson, Assistant Community Development Director, responded that this is a modification to a previously approved plan; it's not a new project. The code does not require a sketch plan step for changes to a previously approved plan. Commissioner Withrow asked if comment can be made on those elements. Kent responded yes.

### **Applicant's Presentation:**

Applicant's architect Mike Shult addressed the Commission, stating that they are not required by code to have ADA accessible access to the second floor of this commercial space, only to the first floor. The second floor tenants will be non-medical in nature; therefore, no elevator is required. Mr. Shult described the project including that the residential units all have interior stairway access and they made grade level access straight off the sidewalk without any grade change to eliminate the handicap ramp that was shown previously. Mr. Shult explained that most of the site modifications occur directly up the alley mainly for parking as well as utility access and Xcel needs. Mr. Shult described the parking, change in architecture and floor layouts, and the courtyard noting the design is that the main entry for the restaurant off Main Street with a bi-fold door system serving the courtyard space and the second floor is intended to be restaurant facing the Main Street. Mr. Shult concluded that his presentation summarized most of the changes in terms of the overall big picture items, improve parking, circulation, site access, utility, accommodation, and overall appearance of the project.

### **Commissioner Questions for Applicant:**

- Commissioner Franken expressed disappointment that there is no elevator access to the second floor. The Applicant responded that the tenant has not proposed an elevator but it is an interior option; an elevator is not excluded, just not a requirement at this time.
- Commissioner Franken questioned the second floor restaurant and asked if that was a separate restaurant or the same restaurant as the first floor. Applicant responded that this was all the same dining on both levels and noted if the restaurant wanted a third floor deck, they would then be required to have elevator access to that third floor.
- Commissioner Franken asked why the Planning Commission shouldn't think about the handicap space in the back as non-compliant snow storage. Applicant responded that it does meet code, the original design did not and there is no compromise in terms of code requirements for the handicap space. Commissioner Franken asked if the space is counted as part of the snow storage or not? Applicant responded that all of the parking spaces, with the exception of the last foot or so, are underneath the roof area and therefore do not require snow storage.
- Commissioner Lederer asked if the intended use was for short term rentals. Property owner, Myra Mesko, responded she was unsure of the exact use at this time but she planned on maintaining ownership. Commissioner Lederer added that the adjacent hotel can support 20-22 guests this one can support 26 based on the STR code and so the function is extremely different.
- Commissioner Skupien asked if it is possible commercial units 103 and 104 can be combined? Applicant responded yes, they can be combined.
- Commissioner Skupien asked if the second floor will be professional offices? Applicant responded, that they will be 'professional' (catch-all) offices but there is no specific tenant planned yet. Commissioner Skupien asked if the tenant requires handicap access then would an elevator have to be installed? Mr. Shult responded that defined by code, specific uses require elevator access and others that do not. If the tenant requires handicap access then they would have to put an elevator in.
- Commissioner Skupien asked if the apartments will be long term rental and not STR. Mr. Shult stated that he could not speak for the owner.
- Commissioner Skupien questioned the landscaping and being concerned there are too many trees and as they mature, it will be dark. Applicant described the proposed landscaping and they are looking for something that would provide a linear effect, not only to make it inviting from the street but to screen the apartments from adjacent commercial space.

## Public comments:

- C. J. Conant, legal representative for the Hotel Frisco, 308 E Main Street, adjacent to the Rainbow Court. Stated that he wanted to respond primarily to the letter that Mr. O'Connor submitted to the staff and the Planning Commission. Mr. Conant clarified that the purpose of their letter was not to ask the Commission to serve as the jury and the judge of the issues that exist between the Hotel Frisco and Ms. Mesko. The Staff Report assumes Ms. Mesko is going to prevail and get all the entitlements, including a transformer and refuse management. Right now is not the appropriate time to approve the plan. Some entitlements she does not have.

Commissioner Stabile reminded those with public comments to focus on the zoning code and what the Planning Commission is there to review.

- Brad Hovis owner of the Hotel Frisco, 308 E Main Street. Mr. Hovis began by stating that the purpose for his public comment is related to the zoning codes and the timeline for construction. Mr. Hovis commented on the transformer and the dumpster history between the two properties.

Don Reimer, Community Development Director, addressed the Planning Commission Chair for permission to interrupt the Public Comments with a reminder about the necessity of having a clean record on this application. Further stating that Mr. Hovis is certainly entitled to express concerns about the application; however, what he is expressing is not related to the code which is what the Planning Commission is required to consider. It cannot consider any of these civil matters between parties. Also the Planning Commission does have a protocol for three minutes for speaking. Mr. Reimer reminded people making public comment to keep comments focused on the issues related to the code, which is what the Planning Commission is able to consider

- Mr. Hovis continued addressing the Commission by stating that the likelihood of this project lasting past what the Code allows, is very high, unless the Town can help the property owner understand, what needs to happen from a building perspective to work with the neighbors.
- Julie King's comment was read into the record by Commissioner Stabile. Ms. King asked that if a person with a disability who wants to occupy the professional space upstairs does not have access, does that mean they will not be eligible to occupy that space based on their disability? That does not sound inclusive to me; this is discrimination, according to Julie King. Commissioner Stabile responded that her concern would be addressed in the Commissioner Discussion.
- Steven O'Connor, legal representative on behalf of Owner, Myra Mesko reiterated that they are not here for approval of civil matters – they are here for approval of amendments to the project.
- Frederick Sprouse, legal representative for Bagalis Building, 320 E Main Street expressed concerns about zero lot line, and matters which may affect the health, safety and welfare of the town.
- Andrew Schmit, 320 E Main Street #201 asked if there is an elevation that shows the property adjacent to 320 Main Street that would show windows and expressed a concern over his deck privacy. Applicant responded that no windows are on the property line due to fire wall requirements and there are no openings overlooking his deck.
- Brad Hovis owner of Hotel Frisco, questioned whether the grandfathering that is being used for snow storage is also applicable to the utilities. Commissioner Stabile stated that it was his understanding that there is no grandfathering of the snow storage that Ms. Mesko has because the spaces are covered. Staff was requested to speak to this.

Mr. Reimer addressed the Chair and requested that if there are any other public comments from the members of the public, that they be given a chance to make those, then the Applicant be given a chance for a rebuttal to the public comments. After that Staff can address those questions.

- Andrew Schmit commented that a Commissioner said, we couldn't have a window that faces the zero lot line and asked if he will have to close up the window in his back bedroom that was already in place. Commissioner Stabile responded stating that he was not familiar with Mr. Schmit's unit, and could not speak to that.
- Brad Hovis asked if there is anything in the code that would not allow negative impact on neighbors? Commissioner Stabile responded, it is not in the Zoning Code.

**Applicant response:**

Mr. Shult reiterated that an elevator is not a code requirement at this time and they designed the shell to accommodate an elevator if a tenant required one. This project would not affect windows per se, the windows that Mr. Schmit is referring to are not on the property line. Mr. Shult noted that they strongly believe this project is a positive addition to the town both economically and visually.

Mr. Shult noted that Ms. Mesko has been having audio issues but has been listening. Mr. Reimer was able to unmute her audio and Ms. Mesko addressed the Commission.

- Ms. Mesko stated that she was taken aback by Mr. Hovis' remarks and that she has been working very hard to meet all the code requirements.

Kent reminded the Commission of a few things that are not under the Zoning code, that Commissioners may state how they feel about it but it's not going to be part of their decision and really does not need to be part of the comments:

- Negative financial impact to neighbors is not within the Unified Development Code (UDC).
- The UDC does not reference short-term rentals versus long term rentals. That is under a different part of the Town Code and the taxes associated with short-term rentals are also not within the Planning Commission's purview to take into consideration.
- The transformer decision is made by Xcel. The Town does not have jurisdiction over Xcel requirements.
- Xcel was at the Development Review Committee meetings with the applicant and the general contractor on the project. It was made clear to those parties, that the project will have an expiration of three years that work has to commence. If Ms. Mesko cannot build what the Planning Commission approves, the project will have to come back to the Planning Commission for further review.
- With regards to accessibility, accessibility for parking and handicap access is under the UDC. Elevators and other internal access for ADA requirements, including ramps, are not under the UDC. The Building Division will follow their code and their requirements when tenant finish applications come in for these buildings.

**Commissioner Discussions:**

- Commissioners would like to make a special condition that if there are significant changes to the project (i.e., transformer, dumpster, parking, architecture) the project would have to come back to the Planning Commission for approval. However, it might be that the civil issues may not impact the building.
- Commissioners agreed that having no elevator to the second floor is frustrating and concerning.
- Commissioners expressed hesitancy about the outside dining patio and the courtyard not being a totally public space.
- Commissioner Lederer expressed concern that these units, whether they're short-term rentals or long-term rentals not being in their purview is perhaps a flaw in Frisco's code right now.
- Commissioner Skupien stated that if the four units were sold, an HOA would have to be created.
- Commissioners expressed concern on how to keep these two buildings and construction from negatively impacting the Town and noted Staff should ensure construction parking needs to go elsewhere with the Main Street promenade occurring this summer.

- All in all, the Commissioners agreed that it is a great looking project and they would like to see this project completed. Architecturally there have been improvements, no bulk plane encroachments, etc.

WITH RESPECT TO FILE NO. 017-20-MOD, COMMISSIONER FRANKEN MOVED THAT THE RECOMMENDED FINDINGS SET FORTH IN THE MAY 21, 2020 STAFF REPORT BE MADE WITH THE ADDITIONAL CONDITION THAT ANY MODIFICATIONS, NOT INCLUDING CHANGES TO THE INTERIOR OF THE BUILDING, TO THIS APPROVED SITE PLAN APPLICATION SHALL REQUIRE PLANNING COMMISSION REVIEW AND THAT THE PLANNING COMMISSION APPROVES THE MODIFICATIONS TO THE APPROVED MAJOR SITE PLAN APPLICATION (238-18-MAJ) FOR THE RAINBOW COURT EAST BUILDING MIXED-USE PROJECT, LOCATED AT 310 EAST MAIN STREET / LOTS 3-5, BLOCK 9, FRISCO TOWNSITE MOTION SECONDED BY COMMISSIONER LEDERER.

**Vote:**

FRANKEN	YEA
LEDERER	YEA
SKUPIEN	YEA
STABILE	YEA
WITHROW	YEA
HELD	ABSENT
LESMES	ABSENT

***MOTION CARRIED***

**Staff and Commissioner Updates:**

- Don Reimer acknowledged and commended Jason Lederer for his four years of service on the Planning Commission. Commissioner Lederer stated that his service has been an honor and it has been great to get to know the Town better and he admires everything that they're doing and have done. Commissioner Stabile and other Commissioners thanked Jason for his valuable contributions.
- Don Reimer stated that the Planning Commission has four open seats which includes Andy Held's position as he moved to the Town Council and three expiring terms. With Robert and Kelsey expressing their desire for re-appointment, the Town has seven additional applicants. The Town Council is scheduled to interview and make appointments on May 26<sup>th</sup>.
- Don Reimer noted that the summer Main Street changes are being termed as the Main Street Promenade, with a focus on potential pedestrian and bicycle traffic rather than vehicular traffic for a number of blocks from the middle of June to maybe Labor Day. Don noted parking is a concern. Mr. Reimer noted the Town has a survey going out to each business along Main Street asking for those wanting a presence on Main Street although the Town has still not received clearance from the State for restaurants to open for dining in.
- Commissioner Withrow asked about an interview schedule for the open Planning Commission positions. Mr. Reimer stated that a schedule would go out and Commissioners Withrow and Franken would not have to interview for their re-appointment. The interviews will be virtual for 10 minutes in 10-minute intervals from 5:40 p.m. – 7:00 p.m. and will be made official the next day in the Town Council packet.
- Commissioner Skupien asked when the wash bay is scheduled to reopen. Mr. Reimer replied that Jeff Goble, Public Works Director, indicated the date is June 1<sup>st</sup>, subject to change.
- Mr. Reimer noted there will not be a Planning Commission meeting held on June 4, 2020 and the June 18<sup>th</sup> meeting will be held and Town Attorney Thad Renaud will be present for legal presentations and we will conduct Planning Commission orientation and there will be a Community Plan Action Items recap.
- Commissioners Lederer expressed that the pedestrian mall is great thing; other Commissioners agreed.

**Adjournment:**

There being no further business, Commissioner Franken made a motion to adjourn, seconded by Commissioner Withrow, and was unanimous. The meeting adjourned at 7:05 p.m.

Respectfully submitted,

Cheryl Mattka  
Community Development Department