

**CITY OF SOUTH JORDAN
ELECTRONIC
PLANNING COMMISSION MEETING
COUNCIL CHAMBERS
February 28, 2023**

Present: Commissioner Michele Hollist, Commissioner Nathan Gedge, Commissioner Steven Catmull, Commissioner Trevor Darby, Commissioner Laurel Bevans, Assistant City Attorney Greg Simonsen, City Planner Greg Schindler, Deputy City Recorder Cindy Valdez, Senior IS Tech Phill Brown, IS Systems Administrator Ken Roberts, Planner Damir Drozdek, Meeting Transcriptionist Diana Baun

Others: Nate Brimhall

Absent: Commissioner Aaron Starks

6:31 P.M.
REGULAR MEETING

A. WELCOME AND ROLL CALL – *Chair Michele Hollist*

Commissioner Michele Hollist welcomed everyone to the Electronic Planning Commission Meeting.

B. MOTION TO APPROVE AGENDA

Commissioner Gedge motioned to approve tonight's agenda as published. Chair Hollist seconded the motion; vote was unanimous in favor. Commissioner Starks was absent from the vote.

C. APPROVAL OF THE MINUTES

C.1. February 14, 2023 Planning Commission Meeting Minutes

Commissioner Bevans motioned to approve the February 14, 2023 Planning Commission Meeting Minutes as published. Chair Hollist seconded the motion; vote was unanimous in favor. Commissioner Starks was absent from the vote.

D. STAFF BUSINESS

City Planner Greg Schindler asked to discuss the list of topics sent to Planning Director Steven Schaefermeyer for the upcoming joint meeting with City Council, and noted he needed more details on some of the items. It was agreed they will discuss that at the end of the meeting.

E. COMMENTS FROM PLANNING COMMISSION MEMBERS

Commissioner Nathan Gedge shared a brief overview of both the council study session and regular meetings from February 21, 2023, which he attended.

F. SUMMARY ACTION - *None*

G. ACTION - *None*

H. ADMINISTRATIVE PUBLIC HEARINGS

H.1. BRIMHALL ESTATE DETACHED GARAGE CONDITIONAL USE PERMIT

Address: 11229 S. Alisa Meadow Dr.

File No.: PLCUP202300003

Applicant: Todd Lloyd Construction

Planner Damir Drozdek reviewed background information from the Staff Report.

Commissioner Nathan Gedge asked if the second floor were to become an ADU, would that require another application and would two separate ADUs be allowed in the same building.

Planner Drozdek responded that would not be allowed as there can only be one ADU per property. The only reason this is here before the commission is because of the second floor window.

Chair Hollist asked for a review of the rules regarding second story windows and when they require a conditional use permit.

Planner Drozdek confirmed that it has to do with the distance from the property line, not from any neighboring homes.

Chair Hollist asked about a few different balcony scenarios, and if they would be allowed.

Chair Hollist opened the public hearing for comments, and invited the applicant up to speak first.

Nate Brimhall (Applicant) – had nothing to add to Planner Drozdek’s presentation.

Chair Hollist closed the public comment portion of the hearing. She asked the applicant about his plans for the space, specifically the second story.

Mr. Brimhall responded that the second story will be mostly storage. The ADU is meant for something like a mother-in-law living area. The garage is really the main purpose for this, and it is to be used as a studio for his art.

Chair Hollist asked about the common area on the second floor.

Mr. Brimhall responded that is for things like Christmas storage, office space for the future, etc. The purpose of the windows and balcony are really just for light, the balcony itself is more of just a cover for the unit below.

Chair Hollist asked some clarifying questions about which way the window faces and staff responded that the window is more than 20 feet away from the north property line, but because of the position of the window it is within 20 feet of the east property line; it is not facing the east, it faces Park Palisade Drive.

Commissioner Darby motioned to approve File No. PLCUP202300003, Conditional Use Permit application.

Chair Hollist asked what percent coverage of the property is allowed in this zone, and what this structure brings their coverage to.

Planner Drozdek responded that the allowed amount is 40%, and that while he doesn't know the exact coverage in this case, it is definitely below 40%. The footprint of the detached garage is around 1500 square feet and the house is around 2500 square feet, with the property itself around 15,000 square feet.

Commissioner Gedge seconded the motion; Roll Call vote was 5-0, unanimous in favor. Commissioner Starks was absent from the vote.

I. LEGISLATIVE PUBLIC HEARINGS - *None*

J. OTHER BUSINESS

The planning commission and staff discussed the possible topics for the upcoming joint meeting with the city council.

Chair Michele Hollist noted that the topic of communicating with current Daybreak residents, as well as what can be done with the new land opportunity in terms of what they've learned from previous experiences is their number one priority. She then asked what clarifications were needed for the other three requested topics.

City Planner Greg Schindler asked if they are wondering why short-term rentals aren't currently regulated, is the commission concerned and believes that those should be regulated.

Commissioner Trevor Darby noted that to him it is concerning that people can build ADUs much more easily.

Planner Schindler said those are usually long-term rentals. The only way the city regulates the ADUs is that the homeowners can't rent out their ADU on a short-term basis.

Commissioner Darby asked how that is regulated.

Planner Schindler said it would be by complaint to the city. Short-term rentals are supposed to be for an entire building, or just a room. For short-term rentals the owner is either not supposed to be living on the property and renting the entire place out, or they are living there and only renting a room to someone. To be a long-term lease there has to be a lease for at least 30 days.

Commissioner Darby asked if that could be worked around by signing a lease with a LLC, which then short-term leases the property. This would allow the owner to have a long-term lease, and they are not the ones doing the short term-rentals.

Planner Schindler said the homeowner has to live on the property to have an ADU. He clarified that the term ADU applies to any unit, basement unit, separate guest house type unit, etc.

Commissioner Steve Catmull wonders if this is well understood by the residents. To him, it sounds like he could short-term rent the room if it's upstairs, but a downstairs ADU with a kitchen and bathroom couldn't be rented short-term.

Planner Schindler said it's hard to say if some people might be doing that, but they signed an affidavit that was recorded, agreeing to live on the property and that any leases for their ADU would be 30 days or longer. If caught not doing this, they lose their ADU permit.

Chair Hollist asked if they did not apply for an ADU permit, could they then rent portions of their property short-term. She noted that her neighbors have been complaining about another neighbor renting their basement as an Air B&B, but they don't have an ADU, and she has been trying to figure out how that was happening. She noted that she would still like to discuss short-term ADUs, as that is the issue she is hearing about.

Commissioner Laurel Bevans asked to confirm that if you don't want an ADU, but you want a second kitchen in your basement, you would have to apply for an ADU regardless.

Planner Schindler responded that you can have a second kitchen in your basement. An ADU is defined as a kitchen, bathroom, bedroom and a separate entrance; you must have all four of those things or it's not an ADU. If you do have all four of those things it is considered an ADU, whether you intend to rent it or not. They are usually caught because basements are finished without a permit and it's discovered that they meet all four requirements at a building permit stage, at which time the homeowner is told by the city that they have to get an ADU permit first before the building permit is approved. ADUs are allowed in all single family residential zones, so obtaining the permit is not difficult as long as you have the extra parking space on site and your lot is over 6000 square feet. Those are rules that are mandated by the state, and those are the rules we follow. However, if this comes up in Daybreak where ADUs are not currently allowed, or if they aren't in an agricultural or residential zone where ADUs are allowed, the homeowner is given options. They can either remove the separate entrance or open up the inside of their home by removing any doors at the top and bottom of the stairs, the door jams, and any walls those doors could be attached to. There has to be free flow inside the house and no way to block that off if they choose to keep the separate entrance or walk-out.

Chair Hollist moved to the next topic, which was regarding the historic designation of 1055 W and the council's thought process and intent when removing that designation.

Commissioner Nathan Gedge added that there is current development there and will only be more in the future. He believes the commission would like to discuss this to ensure they are aligned with the council on the road, and they would like to know more about any historical background that was previously believed and what others may believe is still tied to that road.

Commissioner Bevans would like to know if there are currently any other areas of the city that are designated historic, and why they have that designation.

Planner Schindler responded there are some places that are designated historic, where the current and future land use is historic. It is around the area of 1300 W and South Jordan Parkway, on the NE corner where there is a park, a former church chapel which is now the home of a sculptor and is on the National Registry of Historic Places. The former Mayor McMullin's family's office building, a white building on 1300 W just south of South Jordan Parkway is another space. It was their old family home and it also on the National Registry of Historic Places and designated as historic by the city as well.

Chair Hollist moved to the next topic, proposed by Commissioner Bevans, regarding conditional use permits. She agreed that she would like to better understand when and why conditional use permits are appropriate. If not discussed with City Council, she would appreciate additional training from Attorney Simonsen to help understand when it is appropriate to apply mitigations, how to identify them, etc.

Commissioner Bevans noted that she believes when she brought that up, it was because she was curious to know more about the options when the public disagrees with a commission decision, and what the next steps are.

Planner Schindler said the appeal process goes to our hearing officer, not the city council. If the hearing officer doesn't overturn the commission's ruling then the only option from there is the 3rd District Court.

Assistant City Attorney Greg Simonsen noted that from his experience advising clients over the years regarding appealing and challenging these kinds of results, one has to remember that you can't introduce new evidence when it goes before the hearing officer. Everything has to have already been introduced previously. The commission can introduce their own evidence during the public hearings, and he suggested clearly explaining that for the record. Since he has been with the city, he has never seen anyone seriously come in with the idea that they would challenge a commission decision. He used to tell his clients that they probably won't win with the commission or City Council, but they need to get all their evidence in as they can't introduce anything new that wasn't presented at the public hearing. If they had obscure evidence or something that couldn't be presented during their allotted time, he would have his clients turn in big thick booklets of evidence, so when it was appealed that evidence was already technically presented. The same thing goes when moving from the hearing officer to the court, no new evidence is allowed.

Commissioner Catmull wondered if this is why issues arise when they have a lot of feedback, since the evidence being presented is mostly feelings and opinions. If they want to help improve the perception of the planning commission, maybe they need to find a way to help residents understand the concept above, that there needs to be evidence on the record during that meeting. Many residents probably think the commission can make their decision based on emotion and feeling, and that if they are strong enough in their feeling, opinions and numbers that the commission should side with them.

Chair Hollist asked if they could get a copy of the public notice that is sent out, and if they could possibly re-word it to educate residents on what the commission needs them to bring and explain that if it meets the codes and ordinances, unless presented with documentable evidence, there is nothing that can be done.

Planner Schindler said all the notices are usually slightly different depending on the application type and the planner sending them. He noted that he does put in his notices that if the planning commission finds that the municipal code requirements are being met, or if it's in Daybreak and it is in compliance with the master development agreement and other documents, the planning commission will approve it. He also noted that he has only been doing that since the end of 2022, so they may not have seen the results of that yet.

Attorney Simonsen noted that as members of the planning commission, they need to have both the appearance and actuality of an objective decision maker that considers the evidence presented before them. They also are citizens of the city, and if something comes up that they are just nauseated by, and they want to oppose it, they have the option to recuse themselves as a planning commissioner on the particular item and sit in the audience as a citizen to present their evidence. He would appreciate any commissioner choosing to do that discussing it with him beforehand so everyone knew and understood what was going on. There have been a few times where he, as a citizen of the city, has wished something wouldn't pass but there wasn't any real evidence presented to stop it.

Commissioner Bevans asked if only the applicant can appeal, or if a member of the general public that was really against something could appeal a decision as well.

Planner Schindler responded that anyone can appeal if they feel aggrieved by a decision. However, most people don't want to pay what starts out as an \$819 fee to pay the hearing officer as a retainer, who then charges by the hour if the time required goes over that, and the appellant would have to pay that. He also asked what order the commission would like the items ranked in terms of priority to discuss.

Chair Hollist said the commission is open to whatever the city council wants to discuss.

Planner Schindler said he will leave things in the order given to him with Daybreak being first, then short-term rentals, the historic designations, and CUPs last. There will also be some training at this meeting provided.

Chair Hollist noted that Commissioner Darby will not be joining them for the joint meeting next week.

ADJOURNMENT

Commissioner Bevens motioned to adjourn the February 28, 2023 Planning Commission Meeting. Chair Hollist seconded the motion; vote was unanimous in favor. Commissioner Starks was absent from the vote.

The February 28, 2023 Planning Commission Meeting adjourned at 7:13 p.m.

UNAPPROVED