

MINUTES OF THE DRAPER CITY PLANNING COMMISSION MEETING HELD ON THURSDAY, NOVEMBER 9, 2023, IN THE DRAPER CITY COUNCIL CHAMBERS

PARTICIPATING: Andrew Adams, Chair
Lisa Fowler, Vice-Chair
Commission Member Susan Nixon
Commission Member Mary Squire
Commission Member Gary Ogden
Commission Member Kendra Shirey
Alternate Commission Member Shivam Shah (Did not Sit)

EXCUSED: Alternate Commission Member Laura Fidler

STAFF PRESENT: Jennifer Jastremsky, Community Development Director
Bret Millburn, Asst. City Manager
Todd Draper, Planning Manager
Maryann Pickering, Planner III
Mike Barker, City Attorney
Spencer DuShane, City Attorney
Brien Maxfield, Senior Engineer Manager
Amie Salazar, Office Manager
Todd Taylor, Planner III

6:30 PM Business Meeting

Chair Andrew Adams called the meeting to order.

1. Items for Commission Consideration.

- A. Action Item: Approve Planning Commission Meeting Minutes for October 12, 2023. (Administrative Action).**

Motion: Commissioner Nixon moved to APPROVE the Planning Commission Minutes for October 12, 2023.

Second: Commissioner Squire.

Vote: A roll call was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioners Fowler, Squire, Ogden, Nixon, and Shirey voted “Aye”. The motion passed unanimously.

- B. Action Item: Approve Planning Commission Meeting Dates for 2024.**

Chair Adams asked if there are dates for planning commission training. Community Development Director, Jennifer Jastremsky reported that the training meeting dates are not yet known. Commission Members may participate in trainings at City Hall or watch remotely. The proposed meeting dates were reviewed.

Motion: Commissioner Fowler moved to APPROVE the Planning Commission Meeting Dates for 2024, as presented.

Second: Commissioner Ogden.

Vote: A roll call was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioners Fowler, Squire, Ogden, Nixon, and Shirey voted “Aye”. The motion passed unanimously.

C. Action Item: Trailside Townhomes Site Plan Amendment Approval Extension (Administrative Action).

On the request of David Tillotson representing IKON Homes for an Extension to the November 17, 2022, Approval of the Trailside Townhomes Site Plan, located approximately at 2142-2318 East Brookings Drive. Application SPR-058-2022. Staff Contact is Maryann Pickering, (801) 576-6291 or maryannpickering@draperutah.gov.

Planner III, Maryann Pickering presented the Staff Report and presented an aerial showing the location of the property. The land use designation is Residential Medium-Density with split zoning as a holdover from the Suncrest Plan of RR-22. There is also a section of RM on the property. The request was initially heard by the Planning Commission in July 2022 when a sidewalk deviation was denied and subsequently appealed by the applicant. The applicant came back in November 2022 at which time the site plan was approved with the decision of the Appeals and Variance Hearing Officer. No Land Disturbance or Building Permit have yet been filed. For that reason, an extension was sought. The applicants are requesting a six-month extension. If approved, it would be valid until May 17, 2024. No further extensions will be offered after that time. Ms. Pickering reported that in May 2023 the applicant’s plat amendment was extended. It is now valid until March 2024. They have until then to record the plat. She reminded the Commission that this is the site plan for the townhomes that were approved.

A question was raised regarding the requirements permitted by the Code for an extension and proof that they were met. Ms. Pickering responded that the applicant indicated that there were delays in obtaining approval from the Suncrest Homeowners Association (“HOA”). As a result, they are required to redesign the buildings. Staff was waiting on the completion of the Site Plan Amendment. It was clarified that there will be new building elevations presented, however, the site plan will not change. The amended site plan will be approved by the Zoning Administrator and will not come before the Planning Commission.

The applicant, John Wheatley, was present. He stated that his partner is David Tillotson. They are very close to resolving all of the issues and will be submitting a Site Plan Amendment for the roof change that is required by the HOA. There was a small section of flat roof over the stairs that was not allowed. As a result, they did a complete redesign of the roof. Their construction financing is in place and they expect to begin construction once the permitting is secured.

Motion: Commissioner Fowler moved to APPROVE the site plan extension as requested by David Tillotson, representing IKON Development for Trailside Townhomes, Application SPR-058-2022, based on the request by the original applicant and the following:

Finding:

1. **The applicant has shown good cause to obtain an extension and that substantial action has occurred towards obtaining a Land Disturbance Permit.**

Second: Commissioner Shirey.

Vote: A roll call was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioners Fowler, Squire, Ogden, Nixon, and Shirey voted “Aye”. The motion passed unanimously.

D. Public Hearing: Ambyr T. Lindsay, Inc. Home Occupation Conditional Use Permit (Administrative Item).

On the request of Ambyr T. Lindsay representing Ambyr T. Lindsay, Inc. Ambyr Lindsay, Terry Young, and Laurie Young request for Approval of a Home Occupation Conditional Use Permit in the R3 Zone to allow for a Home Occupation providing Cosmetology and Barbering Personal Care Services on approximately 0.36 acres, located at 12972 South Brookhaven Cove, also known as Application HOCC-6837-2023. Staff Contact is Todd Draper, (801) 576-6335 or todd.draper@draperutah.gov.

Planning Manager, Todd Draper presented the Staff Report and stated that the request is for a Home Occupation Conditional Use Permit. The property was identified on vicinity and aerial maps. The land use designation is Medium-Density Residential and the zoning is R-3. The basic floor plan and site plan were presented. The proposed salon is located near the front of the home. The business will be a personal care service use of cosmetology and barbering. It was noted that some remodeling has been done without obtaining the required permits. That situation is in the process of being remedied. One public comment was received that was provided to the Commission. No emails or phone calls were received. The comment came in as a Code Complaint earlier in the day that was considered to be applicable as public comment.

Parking issues were discussed. There was concern that there are only two parking spaces behind the garage on the driveway. The applicant lives in the home with her parents and there were at least three personal vehicles operating from the property. Staff believes that the applicant should pave one additional stall on the side of the existing driveway and home up to the property line so that there is additional off-street parking for customers coming to the salon.

Commissioner Fowler asked about enforcement of the parking condition. Mr. Draper suggested that given the time of year, the applicants could be given a timeframe to comply. Staff could visit the site periodically once the business was operating to verify that parking was not becoming an issue. The permit could be granted now so that the applicant can begin working. Verification would also be able to be done at the time of renewal of the Business License.

The applicant, Ambyr Lindsay, reported that she lives in the residence with her parents, Terry and Laurie Young. She also has a teenage daughter and among them, there are a total of four vehicles. They are open to the idea of pouring the additional concrete driveway but requested that they be given

time to complete the work as it is an added expense in addition to updating the home to build the salon. To mitigate the parking concerns, Ms. Lindsay has been in communication with some of her neighbors. She has received a great show of support from the neighbors in the circle. Two neighbors, Reid Hales, and Judy Jones, both volunteered to make parking available in their driveways for Ms. Lindsay's personal vehicles so that the two spaces in front of the garage are available for her clients during business hours.

Ms. Lindsay reported that she and her parents recently combined two households. Her mother has neurological issues and struggled to let go of many of her personal belongings. Currently, they are using the garage for storage. Ms. Lindsay was pleased to report that it has since been cleaned out but contains a few items that have been listed for sale. If they do not sell by Thanksgiving they will be donated. This will then free up the two-car garage to park two vehicles in. The neighbors in the meantime will allow the use of two parking spots in their driveways during business hours. Ms. Lindsay reported that the front yard area of the home has been cleaned up. She went through a divorce this year and combining households with her parents was for financial reasons and will benefit both parties. They moved to this neighborhood and have been astounded by the support of the neighbors.

With regard to the building permit issue, Ms. Lindsay stated that it has been paid in full. The City's Chief Building Inspector, Keith Collier, visited the site and proposed two adjustments that have since been completed. In response to a question raised, Ms. Lindsay stated that she intends to have one chair in the salon. She expressed in her permit request that there will never be more than two vehicles on the property from clients. There will be two only when she double books, which is not typical. She stated that she normally sees only one client at a time.

A Commissioner asked Ms. Lindsay how long she expects it to take to save up for a cement pad. Ms. Lindsay stated that her preference was to have one to two years to complete the work. She is currently limited with booth rent at her current studio to working only two days per week. With small children that has worked but she has since moved and got divorced, which resulted in financial shifts that will require her to work more frequently. Adding one or two days will help. Her parents are the co-owners of the home and on a fixed income. Because the parking pad is associated with her business, she does not expect her parents to contribute to the cost.

It was noted that the two neighbors who offered their driveways have ample room to accommodate one to two cars. Ms. Lindsay was grateful for their generosity. The proposed business hours will be 9:00 a.m. to 6:00 p.m. She reported that she previously operated from an in-home salon in Midvale and received no complaints.

Chair Adams opened the public hearing.

Reid Hales gave his address and stated that he offered up his three-car driveway for Ms. Lindsay's use. He commented that Ms. Lindsay has been a wonderful neighbor and expressed his support.

Amy Ketchum reported that she lives in Judy Jones' basement as a caregiver. Ms. Jones offered up the driveway as well for Ms. Lindsay to use. There is plenty of room. Ms. Ketchum was excited to have a hairdresser across the street and expressed her support.

Bruce Brown gave his address and stated that he travels the street often and commented that when Ms. Lindsay first moved in he had concerns with the chaos. As he has come to know Ms. Lindsay, he has been impressed with how hard she works. He expressed his support.

There were no further public comments. The public hearing was closed.

Chair Adams asked about the possibility of adding language that the parking requirement be reviewed in one year to not unduly require additional parking that may not be required. He acknowledged that it would be costly to pour concrete. Mr. Draper suggested that the condition either be added as a condition or be omitted. Staff would be happy to review the use in a specified period of time or at renewal. Ms. Jastremsky stated that if staff was directed to review it, they would request that specific parameters be included.

Commissioner Ogden stated that the most traffic that should be generated is the client and potentially the person with the next appointment for a maximum of two cars. If the garage is empty it can accommodate two cars with cars on the street or in the driveways of the neighbors, which would provide enough parking. Mr. Draper stated that as the Code is written, they only count the space in and behind the garage when counting the required parking for the dwelling. Staff's concern when writing the Staff Report was that with three adults living in the home, there was the potential for three vehicles, adding two more client vehicles would result in up to five cars, which cannot be accommodated on the property as required.

Commissioner Squire commented that the home is on a cul-de-sac and parking is tight. There are four homes in the circle, which does not leave much excess room for on-street parking. She was pleased with the support of the neighbors but was aware that those situations can change. She did not think the City should fail to require the parking that is specified in the Code just because the neighbors are generous. If the situation were to change, the Commission would have put itself in a situation where they have approved a use that is not appropriate. She understood the expense but stated that that is the cost of having a home-based business. If a home is to be used as a business, it must be suitable for the activity. She considered one year to be incredibly generous. Mr. Draper stated that the concrete pad will have to meet the dimensions of one parking stall (18' x 9') and be paved.

Commissioner Shirey was willing to compromise but suggested that one year be allowed to complete the work. Commissioner Squire stressed that it should be a condition and she would not support the request if the requirement for the cement pad was removed. Commissioner Ogden agreed. While he sympathized with Ms. Lindsay, he respects the City Code and the rights of the neighbors and suggested the mandate for the cement pad remain. He suggested that Ms. Lindsay be given one year to comply. Commissioner Nixon agreed with Commissioner Fowler and felt that one year was very generous.

Motion: Commissioner Squire moved to APPROVE the Home Occupation Conditional Use Permit as requested by Ambyr T. Lindsay representing Ambyr T. Lindsay, Inc. Ambyr Lindsay, Terry Young, and Laurie Young for a Home Occupation Conditional Use Permit, Application HOCC-6837-2023 based on the following:

Conditions:

1. **All requirements of the Draper City Engineering, Public Works, Building, Planning, and Fire Divisions are satisfied throughout the development of the site and the construction on the site, including permitting.**
2. **The days of operation shall be limited as proposed by the applicant to three days per week, Tuesday, Thursday, and Saturday.**
3. **The hours of operation shall be limited to 9:00 a.m. to 6:00 p.m.**
4. **One additional paved parking stall meeting the minimum size standards of the ordinance shall be added to the south side of the existing driveway for the use of customers coming to the home. The parking stall shall be completed within one year of approval.**
5. **The applicant shall obtain a Building Permit for construction work related to internal modifications made to the home to create the salon.**

Finding:

1. **Reasonable mitigation measures can be placed on the conditional use to alleviate anticipated detrimental effects.**

Second: Commissioner Fowler.

Vote: A roll call was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioners Fowler, Squire, Ogden, Nixon, and Shirey voted “Aye”. The motion passed unanimously.

2. Discussion Items.

A. Discussion Item: Town Center Station Area Plan.

An Overview of the Station Area Plan Requirements from the State of Utah and the Process Taken So Far on the Town Center Station Area Plan. The Actual Plan will be Reviewed at a Future Meeting Date. Staff Contact is Jennifer Jastremsky, jennifer.jastremsky@draperutah.gov, (801) 576-6328.

Ms. Jastremsky reported that the above discussion will count toward the Planning Commission Training. She commented on Station Area Plans and stated that state law changed in 2022. Over the past year, the City has been working on a Station Area Plan for the Town Center area. In 2022, the State Legislature passed HB-462 for cities with Fixed Guideway Transit Stations such as FrontRunner and TRAX to do some master planning to be called a Station Area Plan. The goal is to allow transit-oriented development next to these stations and allow cities to run the planning process. It is in lieu of discussions the Legislature was having about mandating uses and densities next to stations. A

Station Area Plan is considered part of the General Plan, which will need to be amended to reference the Station Area Plans. The deadline for the adoption of Station Area Plans is December 31, 2025, for all stations. Draper City has three stations consisting of the FrontRunner Station and two TRAX stations. There is also a station in Sandy on 11400 South. Half the radius for the Station Area Plan is in Draper City, so they will have to plan for that area as well. This year they have been working on the Town Center with the intent being to do one every year to meet the deadline. Once a Station Area Plan is adopted, it is sent to the Wasatch Front Regional Council (“WFRC”) for certification. It was clarified that there will be three separate Station Area Plans.

Ms. Jastremsky reported that once the WFRC has certified the plan, it must be reported to the Department of Workforce Services. The plans require the City to look at all properties within a one-half-mile radius of the station, which is the station platform. The four specific goals and objectives that Station Area Plans have to meet include the following:

1. The availability and affordability of housing;
2. Sustainable environmental conditions;
3. Access to opportunities, transportation choices, and connections; and
4. Must have a vision and a map.

There must be a public engagement portion that identifies constraints and opportunities within the area. There must also be a five-year Implementation Plan. If the area is already fully developed, the City must analyze the uses. In the Town Center, several residential neighborhoods fall within a one-half-mile radius. The City does not see those neighborhoods redeveloping.

Once a plan is adopted, the Zoning Code must be updated to allow for the development to take place. It is a multi-step process for each Station Area Plan. A map was displayed to show the different station locations. State law allows Station Area Plans to be combined if there is an overlap when they are close.

FrontRunner is unique compared to the other two stations. Half of the property is within the City’s Transit Station District and has Master Area Plans already in place. The intent in that case will be to make those Master Area Plans more cohesive. For the Town Center, a grant was received from the WFRC right before COVID-19 hit. Ultimately, it was used toward the Station Area Plan. The process began in August of 2022. There have been two public open houses and they expect to have a third to review the preferred concept. Online surveys have also been conducted. The Stakeholder Committee was established to look at existing conditions and create multiple concepts. The concepts presented at the public open houses were being reviewed to get feedback from the public. The Project Team and Stakeholder Committee have been working to create a preferred plan that will be presented to the Planning Commission and City Council. Another open house was also to be held to get public feedback.

A question was raised about the Station Area Plan that overlaps into Sandy City and if Sandy will be involved. Ms. Jastremsky stated that they are already working on it. Cities can work jointly. Because the property in Draper City is already developed, she did not see the need for a joint planning effort.

B. Discussion Item: 2023 Annual Planning Commission Training.
State Required Annual Planning Commission Training.

City Attorney, Mike Barker, conducted the training and discussed a recent Court of Appeals Case that touched on interesting legal issues the Planning Commission should be aware of. City Attorney, Spencer DuShane gave a PowerPoint presentation and reviewed the facts of the case. Staff's job is to prepare the Staff Report and make recommendations. The County Council's job is to make findings of fact and support the conclusion based on what is in Staff Report and the evidence presented. The job of the District Court is to review the County Council's decision and determine whether it is arbitrary, capricious, or illegal. The job of the Court of Appeals is to review the District Court's application of the law to the facts.

The 6.35-acre property is in Summit County in the Snyderville Basin and on a ridgeline. The lot was subdivided and existed prior to the portion of the Summit County Code referred to as the Snyderville Code. The application was for an accessory building. The home is large and would require a significant amount of disturbance. The objective of the Snyderville Code was to make sure that buildings do not protrude onto ridgelines that are visible from public roads. There is an exception to this rule for lots that existed prior to the passage of the Snyderville Code. The law existed and the property was subdivided but not built on prior to the passage of the Snyderville Code. For lots greater than five acres, the site grading cannot exceed a disturbance area of 20,000 square feet. If the applicant wants to exceed the 20,000-square-foot disturbance area, they must have approval with special findings. Due to the specifics of the site, a special exception would apply.

It was noted that in order to build the home, a variance was needed from the Board of Adjustment. The applicants came in a few years later wanting to build a 7,000-square-foot accessory building with a site disturbance of 9,785 square feet. Special exception issues were discussed. DuShane and Barker reviewed the Code and stated that the intent was to maintain the mountain character of the area with suburban development and not eliminate the unique character of the Snyderville Basin. Reasons for special exceptions were discussed. They could include possible omissions, unique situations, or deviations. Support was expressed for special exceptions as long as the parameters for approval are enumerated in the Code. Concern was expressed that the standards seem to be very subjective. The comment was made that subjective decisions are easier to contest because there can be claims of discrimination or bias.

Chair Adams stated that he has watched the trend of deviations, which can be an indication that the Code is outdated or does not apply. Trends tend to reflect what the citizens want and the current building standards. Deviations are important to watch. The comment was made that sometimes there is a blind spot in the law that if applied, could result in something that is not desired.

Returning to the Snyderville Code discussion, Mr. DuShane commented that if there is another way to allow the lots to develop that does not deter health, safety, and welfare and that can be done equitably under another provision, it should be done that way. It was noted that limiting the special

exceptions will not result in a large number of homes protruding from the ridgeline in a mountain environment. That is in keeping with the policy statement mentioned earlier. In this case, the first home needed to disturb more than 43,000 square feet. 20,000 square feet was the amount that they needed, which required them to go to the Board of Adjustment for a variance. The Board of Adjustment granted the full disturbance amount. Mr. DuShane reported that with regard to the second building, the applicant applied to do the outbuilding with an additional 9,000 square feet in disturbance. County staff concluded that he needed to go through the special exception process, this time with the County Council because the Code changed. At this point, he had already disturbed more than 20,000 square feet, which was the per-lot limit. Possible outcomes were discussed.

The Staff Report concluded, and the County Council agreed, that the 20,000 square-foot rule applied on a per lot basis. Since the applicant had already disturbed 100,000 square feet, all of the surface grading permitted by the Code had been utilized. Because they made this finding, they determined to analyze the special exception of the Code. The counterargument from the applicant's attorney was that it is not a per lot basis rule that applies but rather a per project rule that applies. Various nuances of the language were discussed.

Some of the findings in the Staff Report were referenced. One was that the proposed application did not protect the scenic qualities of the Snyderville Basin. Another was that granting a special exception would not be consistent with the policies and goals of the General Plan or the intent of the applicable Codes that govern the Snyderville Basin. In the case described, the applicant did not provide evidence showing why it was equitable and describing the unique circumstances. The applicant also knew that the unique qualities of the lot would preclude him from building the second building because he had already developed the first. He was on notice that he could not build it. The matter next went to the District Court. The applicant's attorney argued, and the District Court agreed, that the County analyzed the issue using the wrong criteria. The matter was then remanded back to the County Council who held another hearing. No new arguments were heard. The County Council again denied the application using the previous Staff Reports and records of the hearings conducted including a Reconsideration Hearing to support their finding that the Code criteria are not met. The applicant appealed again and the District Court supported the ruling of the County Council.

The Appellate Court found that there is a presumption that land use decisions of a land use authority on appeal are valid. That presumption is rebuttable if the appellant can show that the decision was arbitrary, capricious, or illegal. The applicant's attorney claimed that site grading is not defined and, therefore, cannot be enforced. The applicant's attorney argued that the site grading provision applied on a per-project basis. If correct, he is entitled to approval. The Court found that the site grading was not defined in the ordinance but not that the lack of a defined term made the decision illegal. Mr. DuShane reported that Courts should define terms first by the terms that are set forth in the ordinance. The arbitrary and capricious standard was discussed as well as the matter having been remanded. It was noted that all four criteria must be met in order to grant a special exception. The Council relied on the record they had up to that point and the court held that it was enough evidence to support a reasonable conclusion by the Council that the request did not qualify for special exception under the standards in the Snyderville Code.

Mr. DuShane commented that to approve something, especially if there are a lot of people present to speak out against it, they analyze whether it meets the Code. He explained that an applicant is entitled

to approval if it meets all of the Code. For that reason, the motion always refers back to the Staff Report.

The applicant's second arbitrary and capricious argument was that there were discrepancies in how he and his neighbors were treated. He also claimed to have been treated differently the second time around. The court cited precedent due to a case that says that failure to enforce an ordinance does not forfeit a municipality's power to enforce it later. Something is not arbitrary and capricious as long as there is substantial evidence to support the action.

A question was raised as to whether the "feel good" purpose statements should be included in the Staff Report. Mr. DuShane stated that they should be. Mr. Jastremsky commented that Staff Reports do not usually contain the actual purpose statement but they do contain the criteria within the Code. Staff can add purpose statements or refer to the Code during a meeting.

3. Adjournment.

Motion: Commissioner Fowler moved to ADJOURN.

Vote: The motion passed with the unanimous consent of the Commission.

The meeting adjourned at 7:59 PM.