Millcreek City Planning and Community Development
3330 South 1300 East
Millcreek, Utah 84106
Phone: (801) 214-2750
Inspections: (385) 468-6690

STAFF MEMORANDUM

From: **Blaine Gehring, AICP, Planner**
To: **Millcreek Community Council**
Meeting Date: **June 4, 2019**

RE: **Conditional Use Permit and Preliminary Plat Approval for an Amendment to the Capri Park Homes PUD Plat for Additional 40 Dwelling Units**

Applicant: **Northstar Builders LLC**

File No.: **CU-19-005**

Request

Millcreek City Planning and Community Development is seeking your input on a request by Northstar Builders, LLC for a conditional use permit and preliminary plat approval for an amendment to the Capri Park Homes PUD Plat for additional 40 dwelling units. The R-M zone allows multi-family developments and planned unit developments as conditional uses. The conditional use permit and preliminary plat approval would allow for 40 additional dwelling units to be built in the Capri Townhouse Apartments complex. The Planning Commission will discuss this matter at their meeting on **Wednesday, June 19, 2019 at 5:00 pm.**

Existing Land Use and Proposed Change

This application is a continuation of the process started with the rezone of the pitch and putt golf course area of the Capri Park Townhouse Apartments. That rezone was approved by the city council in April of this year. were built in 1962 with a pitch and putt golf course as an amenity. Northstar Builders are proposing to construct the 40 units on two separate pieces of common area. One is the unused pitch and putt golf area and the other is an enclosed parking / storage area. A new club house is being proposed on the pool deck of the association's swimming pool. A new, larger maintenance garage is being proposed on the site where the old, smaller maintenance shed is currently located. A new security gate and turnaround area at the complex's entrance is also part of the overall proposal.

Community Council Action

As per Chapter 2.56.100 of the Millcreek City Code, staff is seeking Millcreek Community Council input on the proposed conditional use permit. Specifically, if the proposal is an appropriate addition to the existing area and the council is encouraged to make recommendations concerning the application to the city planning commission.

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Concept Plan



The following are the agreed upon conditions from the approved development agreement with Northstar Bulders which must be met as part of the overall conditional use permit:

"Developer and the City agree that the proposed development will incorporate the following:

1. The Project shall consist of not more than of 40 new single level one-bedroom units on the Property. Each unit shall be a minimum of 750 square feet, not to exceed 30 feet in height measured from original grade and be constructed sustainably as depicted in the attached exhibit. The units shall be compatible with existing structure and cladding materials will be limited to a brick veneer to match the materials on the existing structures and will incorporate approximately 3/12 pitch roofs.

2. Development and construction of a 2,000 to 2,300 square foot club house in the location depicted on the attached exhibit (consisting of the preliminary site plan). The clubhouse is preliminarily intended to include

a small conference room of approximately 195 square feet, a storage room of approximately 96 square feet, two ADA complaint restrooms, a large gathering place, a fireplace, and a food serving area with a sink and countertops but no appliances.

3. Development and construction of a maintenance shed of at least 1,500 square feet in the location depicted on the attached exhibit. The maintenance shed is preliminarily intended to include a small office of approximately 100 square feet, a restroom, and a large maintenance and storage area. The maintenance shed shall be constructed of the following materials: Cement pad with a pole barn structure and metal/aluminum siding and roofing.

4. The Project shall include an additional 66 parking stalls in the locations depicted on the attached exhibit.

5. A newly poured pool deck.

6. Deed-restrict a minimum of six of the units to provide affordable owner-occupied senior housing for at least 15 years. Senior housing means rental dwelling units that are compliant with the Housing for Older Persons Act of 1995, 42 USC § 3601. Owner-occupied means that the owner of the unit must occupy the unit and is prohibited from renting to third parties, subject to the exceptions in Utah Code section 57-8-10.1. Affordable means that the units will be restricted to a sales price of $173,203 upon initial sale and may, after the initial sale of the unit, increase in sale price by 2.5% per year over the previous years' value.

7. Update the covenants, conditions and restrictions that have been approved by the City and shall be recorded against the entire HOA.

8. The construction of a vehicular access gate from 900 East including security cameras, with sufficient queuing area as determined by the City Engineer.

9. Compliance with the fire code, including the provision of fire suppression systems in all new structures, as determined by the City Fire Marshal.

10. No structures in the Project will utilize aluminum or vinyl siding except for the maintenance shed."

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STAFF MEMORANDUM

From: **Blaine Gehring, AICP, Planner**
To: **Millcreek Community Council**
Meeting Date: **June 4, 2019**

RE: **Approval of a Condominium Conversion of 5 Duplexes at 3560 South 1300 East**

File No.: **SD 19-006**

Request

Millcreek City Planning and Community Development is seeking your input on a request by Sean Steinman for approval of a condominium conversion of 5 duplexes located at 3560 through 3578 South 1300 East in an R-2-8 Zone. A recent amendment to the Millcreek Code allowing existing multi-family projects of 8 units or more to convert to condominiums. With preliminary plat approval of a condominium plat and the conditional use permit approval of the Millcreek City Planning Commission, a townhome development will be allowed at this location for the development of the 9 3-story townhomes. The Planning Commission will discuss this matter at their meeting on **Wednesday, June 19, 2019 at 5:00 pm.**

Existing Land Use and Proposed Change

The duplexes are located in an R-2-8 Zone and were built in 1973. The intent of the conversion is to make each side of each duplex a separate condominium to be owned rather than rented. The new ordinance requires a review by the building department, fire marshal and code enforcement as part of the conversion process. Staff will have copies of those reviews available at the community council meeting.

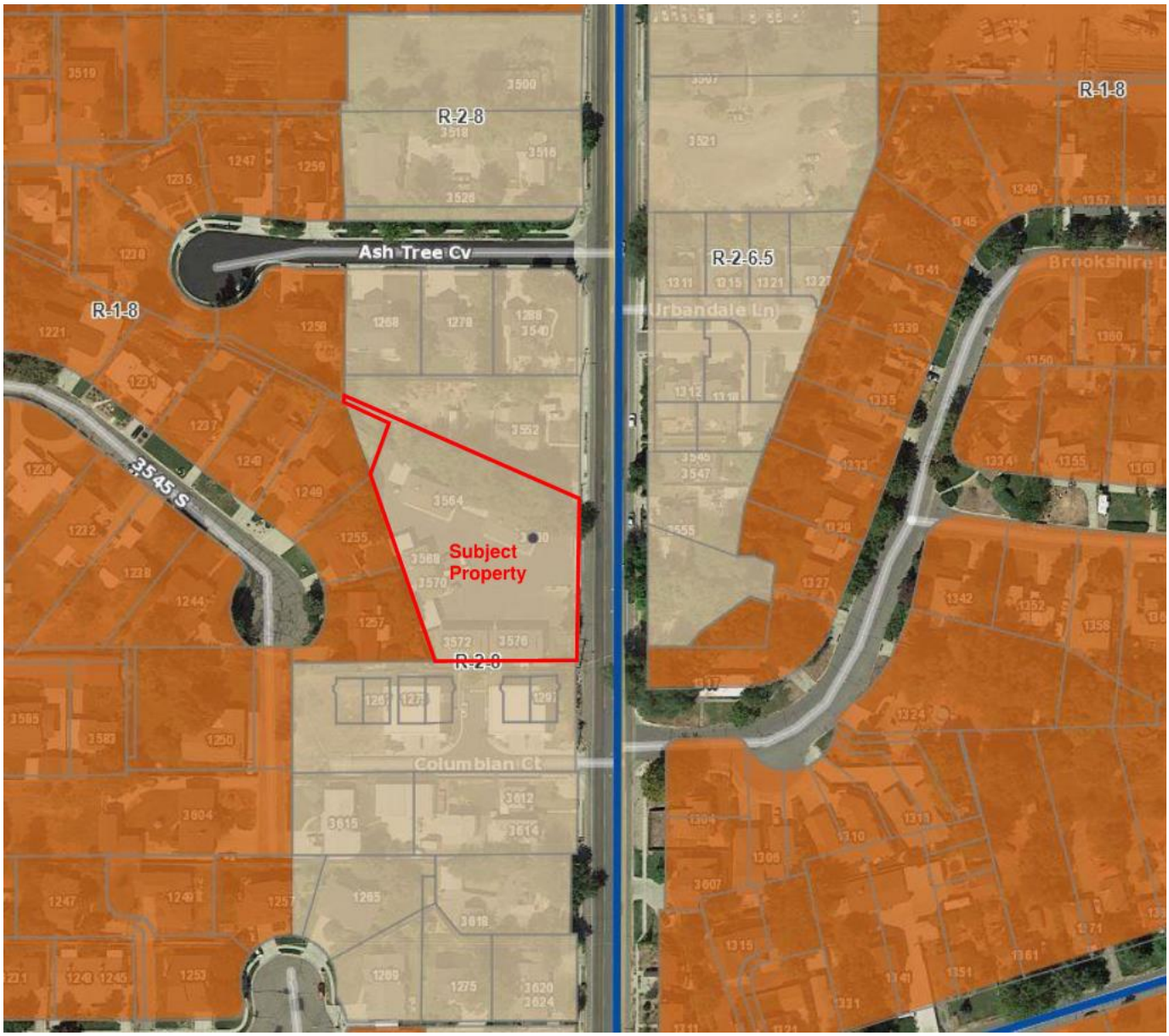
Community Council Action

As per Chapter 2.56.100 of the Millcreek City Code, staff is seeking Millcreek Community Council input on the proposed condominium conversion. Specifically, if the proposal is an appropriate addition to the existing area and the council is encouraged to make recommendations concerning the application to the city planning commission.

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Vicinity Zoning

The parcel is adjacent to single family to the west and duplex residential zoning to the north, south and east along 1300 East.



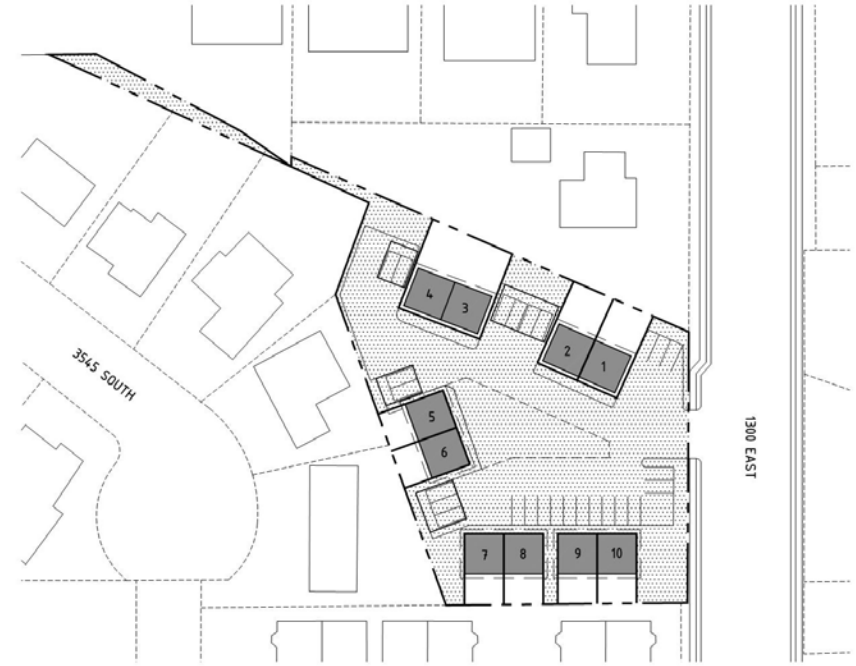
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Street View



Millcreek City Planning and Community Development
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Concept Plan



PROPERTY SUMMARY:

DESCRIPTION:	EXISTING 10 UNIT MULTI-FAMILY PROPERTY CONSISTING OF (5) TWO-FAMILY HOMES. PROPERTY TO BE CONDO-MAPPED WITH 10 CONDOMINIUMS WITH HOA CC&R'S FOR COMMON MAINTENANCE.
PARCEL RECORD:	16322310470000
ADDRESS:	3560 S 1300 E MILLCREEK, UT 84106
LEGAL DESCRIPTION:	COM N 89°47'23" E 600 FT & S 19°04'37" E 18.71 FT FR SW COR LOT 13, BLK 22, 10 AC PLAT "A", BIG FIELD SUR, N 89°54' E 147.41 FT; N 0°18'43" E 158.04 FT; N 64°38' W 325.05 FT; N 9.9 FT; W 19.8 FT N 65° W 362.45 FT; S 0°16'38" W 3.97 FT S 64°53'16" E 397.35 FT; S 65° E 51.42 FT; SW'LY 45 FT M OR L TO E'LY COR LOT 5, ORCHARD VILLA NO. 2; S 19°04'37" FT E 206.71 FT TO BEG. 0.94 AC. 5366-0266 5369-0738 5615-1094
TOTAL ACREAGE:	.98 (42,688 SF)
MUNICIPAL ZONE:	R-2-8
EXISTING DENSITY: ALLOWABLE DENSITY:	10 UNITS 10 TWO-FAMILY DWELLING UNITS PER ACRE
PARKING REQUIRED: PARKING PROVIDED:	2 SPACES PER UNIT = 20 SPACES 26 SPACES
PERMITTED USES:	SINGLE FAMILY DWELLING TWO FAMILY DWELLING

LEGEND:

PROPERTY LINE
NEIGHBORING PROPERTY LINE
HOA MAINTENANCE AREA
UNIT FOOTPRINT

1 PRELIMINARY CONDOMINIUM MAP
SCALE: 1" = 50'

0 20 50 100 200

N

ADDVIRTUE
CONTACT: IAN KAPLAN
IAN@ADDVIRTUE.COM
(M) 585.261.1856

NOTE: THESE DRAWINGS ARE FOR PRELIMINARY PURPOSES ONLY AND ARE BASED ON ASSUMPTIONS MADE WITHOUT A SURVEY PROVIDED BY A LICENSED SURVEYOR.

MILLCREEK CONDOMINIUMS
3560 S 1300 E, MILLCREEK, UT 84106
08.24.18

Millcreek City Planning and Community Development
3330 South 1300 East
Millcreek, Utah 84106
Phone: (801) 214-2750
Inspections: (385) 468-6690

STAFF MEMORANDUM

From:	**Blaine Gehring, AICP, Planner**
To:	**Millcreek Community Council**
Meeting Date:	**June 4, 2019**
RE:	**Conditional Use Permit for a PUD for 9 Townhomes in R-M Zone at 3325 South 1100 East**
Applicant:	**David Pedrazas**
File No.:	**SD 19-007**

Request

Millcreek City Planning and Community Development is seeking your input on a request by David Pedrazas for a Conditional Use Permit approval for a PUD for a 9-unit townhome development in an R-M zone at 3325 South 1100 East. Pursuant to Chapter 19.60.020 of the Millcreek Code, the R-M zone allows a planned unit development as a conditional use. With the conditional use permit and preliminary plat approval of the Millcreek City Planning Commission, a PUD townhome development will be allowed at this location for the development of the 9 3-story townhomes. The Planning Commission will discuss this matter at their meeting on **Wednesday, June 19, 2019 at 5:00 pm.**

Existing Land Use and Proposed Change

The property is currently an old home converted into a law office used by the applicant. Adjacent uses include the Millcreek Hollow Condominiums to the east and south (parking lot), commercial to the north and west, and single family residential to the southwest.

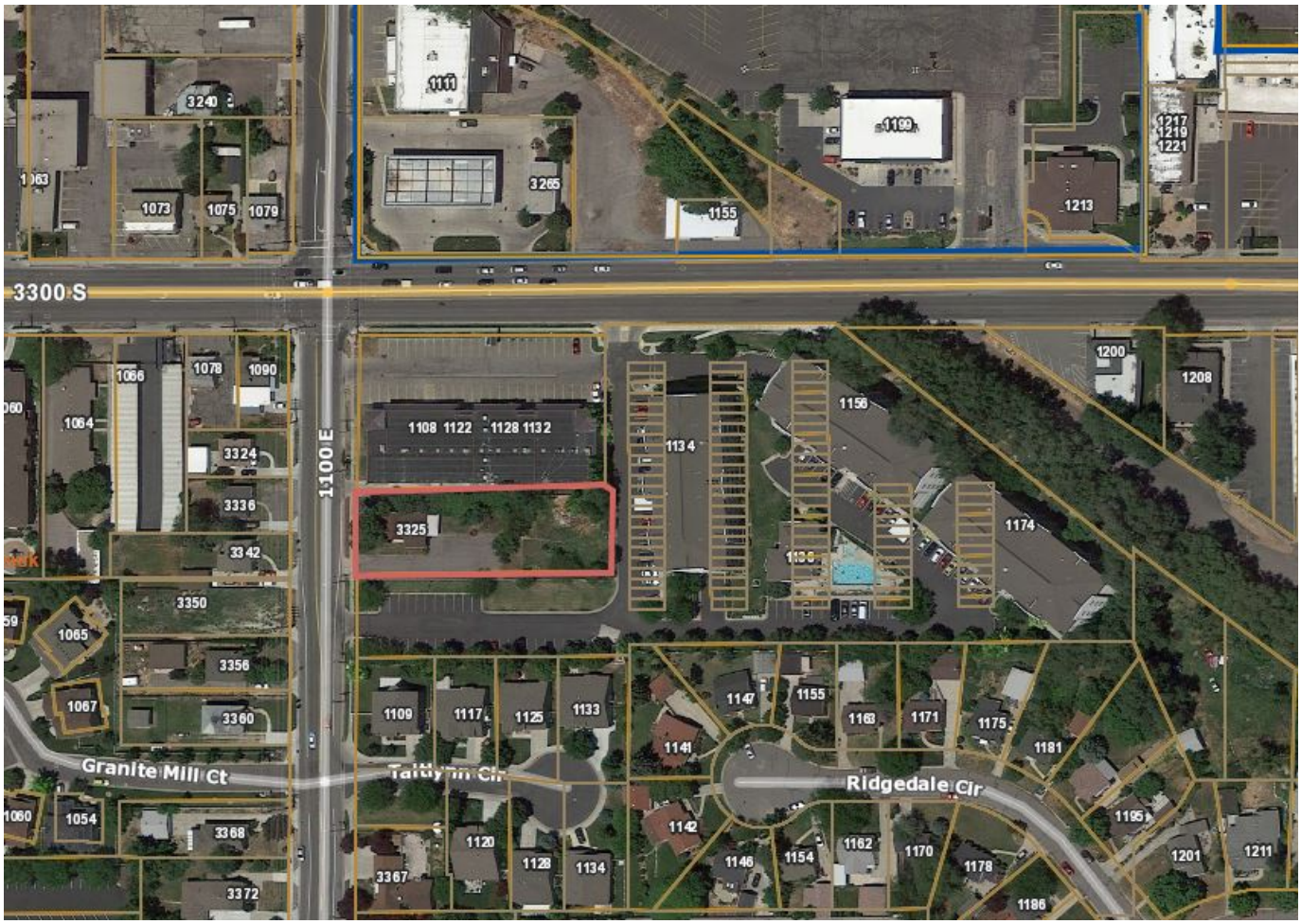
This project was granted a conditional use as 9 townhome apartments in January of this year. The applicant would now like to make the townhomes a PUD for ownership purposes rather than rent them as apartments.

Community Council Action

As per Chapter 2.56.100 of the Millcreek City Code, staff is seeking Millcreek Community Council input on the proposed PUD application. Specifically, if the proposal is an appropriate addition to the existing area, the council is encouraged to make recommendations concerning the application to the city planning commission.

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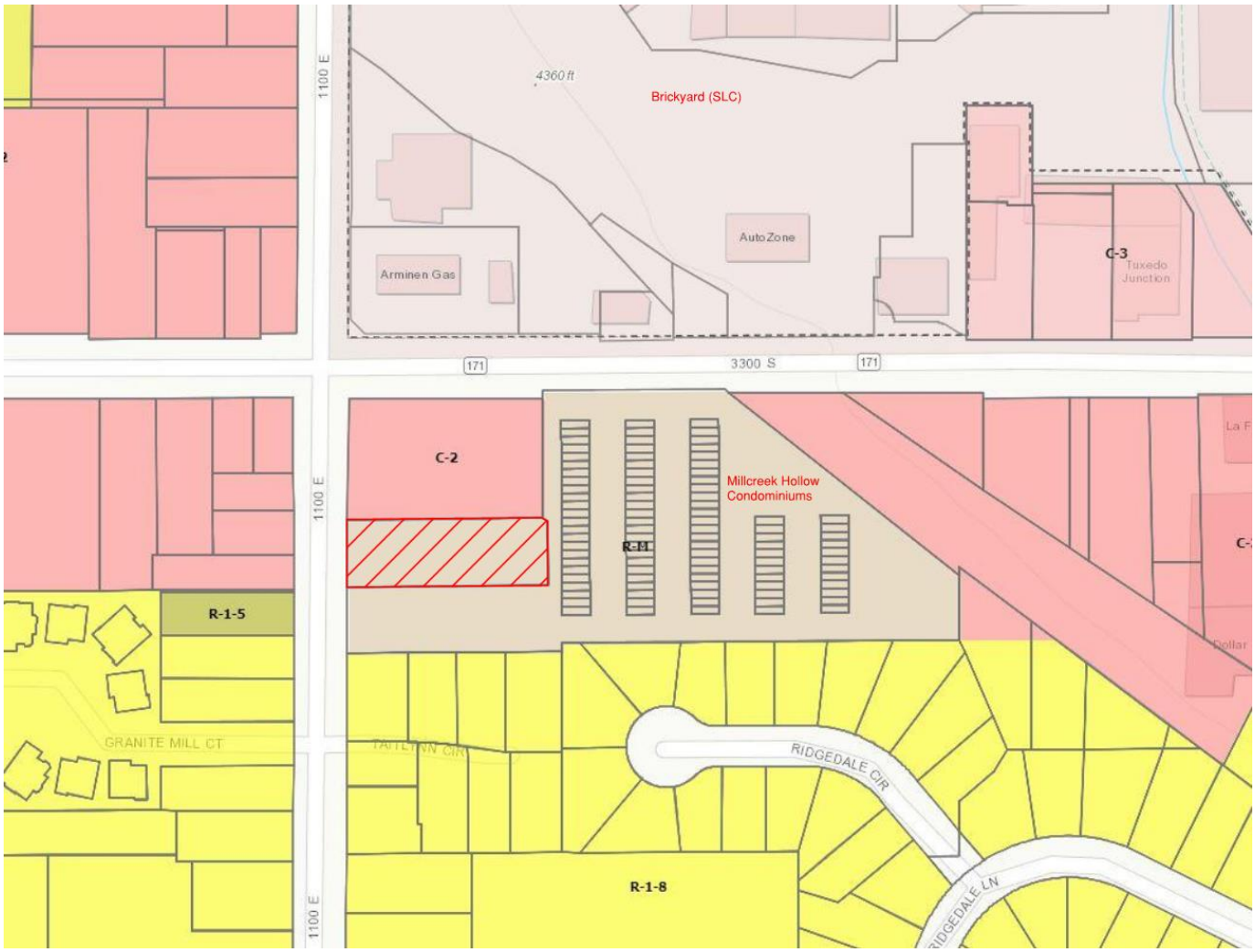
Aerial Map



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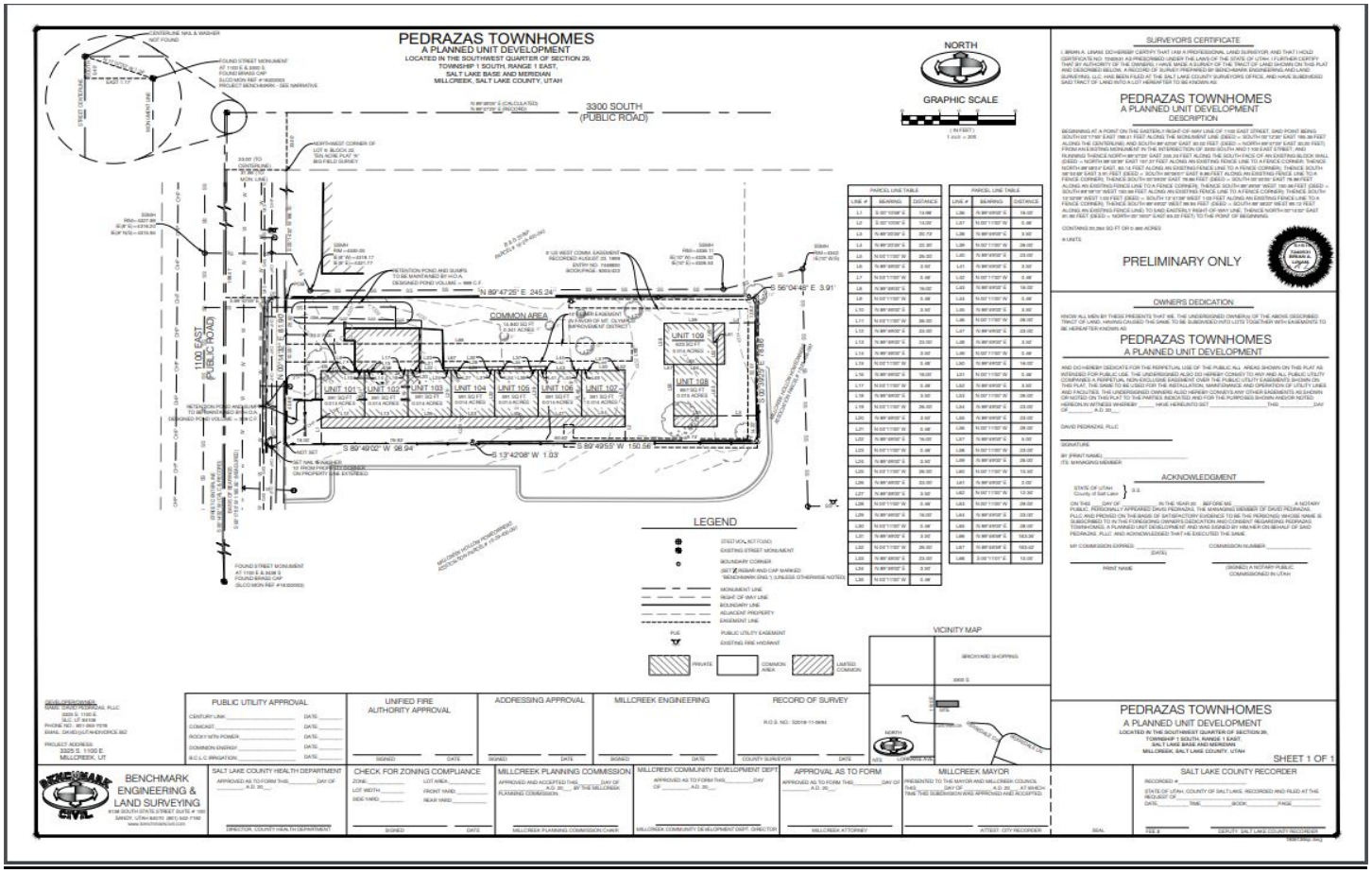
Vicinity Zoning

The parcel is adjacent to C-2 (Commercial Zone) to the north and west; R-M (Multi-family Residential) to the east and south; R-1-5 to the west.



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Plat



These are the conditions approved as part of the conditional use permit for the townhomes. The only change is a plat for the planned unit development, all other conditions will still apply.

"The development of this .48-acre property, is subject to the following conditions approved by the Planning Commission:

1. The applicant shall provide a project parking ratio of 2 stalls per residential unit, plus 0.33 stalls of visitor parking, for a minimum total of 21 parking stalls.
2. The applicant shall provide the proposed exterior detailing/finishes as provided for in the application drawings.
3. The development will be limited to the nine two-bedroom units.
4. The side and rear yards shall be 14 feet.
5. The approved building height is 38 feet.

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6. All service and mechanical equipment must be screened by landscaping or other methods as set forth in section 19.77.070 of the zoning ordinance.
7. Signs will require separate building permits and staff review for zoning/land use compliance.
8. No light source (light bulb, fluorescent tube, or other direct source of light used to illuminate a parking area) shall be visible beyond the property line of any off-street parking area as required by Section 19.80.030 of the zoning ordinance.
9. Any modifications to these approved plans must be approved by the Planning Department, in writing, prior to the changes being implemented in the field.
10. Landscaping shall be installed in compliance with Chapter 19.77 Water Efficient Landscape Design and Development Standards. Any revisions to the landscape plan package shall be reviewed and approved in writing by the director or designee prior to commencement of construction. Re-certification of compliance with the requirements of the landscaping ordinance shall be provided by the qualified professionals who prepared and submitted the original landscaping plan.
11. The applicant will comply with all requirements established through the technical review process prior to receiving final conditional use approval.
12. The applicant will comply with all requirements of the Unified Fire Code, subject to approval by the Fire Marshal.
13. The applicant shall install "No Parking" signs in the fire access lane.
14. The applicant shall obtain a complete review for an approved building permit and shall continually comply with the requirements of Millcreek City, Salt Lake City Department of Public Utilities, and the S. L. City Suburban Sewer District.
15. The applicant and its successors shall properly and continually maintain all required landscaping, fencing, buildings, and roads.
16. The applicant will make a good faith effort to acquire a lease of at least 3 additional parking spaces from the adjacent property owner to the south."

Elevations



FRONT ELEVATION

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STAFF MEMORANDUM

From: **Blaine Gehring, AICP, Planner**
To: **Millcreek Community Council**
Meeting Date: **June 4, 2019**

RE: **Adoption of a Development Agreement for a Mixed-Use Development at 4186 South Main**

Applicant: **Clearwater Homes, LLC**

File No.: **ZM-19-011**

Request

Millcreek City Planning and Community Development is seeking your input on a request by Clearwater Homes, LLC for adoption of a development agreement for a mixed-use development at 4186 South Main consisting of 144 townhomes and 7,500 square feet of commercial space. The Planning Commission will discuss this matter at their meeting on **Wednesday, June 19, 2019 at 5:00 pm.**

Existing Land Use and Proposed Change

This property was rezoned to MD (Mixed Use) in January 2018 for the purpose of developing 403 multi-family residential units and 10,000 square feet of commercial space. The building was proposed at five stories. A development agreement was approved along with the rezone. However, the developer later decided not to do the project and rescinded that agreement. Only the development agreement was rescinded; the rezone is still in place. Since the MD zone requires development agreements to be adopted through the process the city uses for rezones, staff is seeking community council and planning commission recommendations on the new proposal, before crafting it into a development agreement for City Council approval.

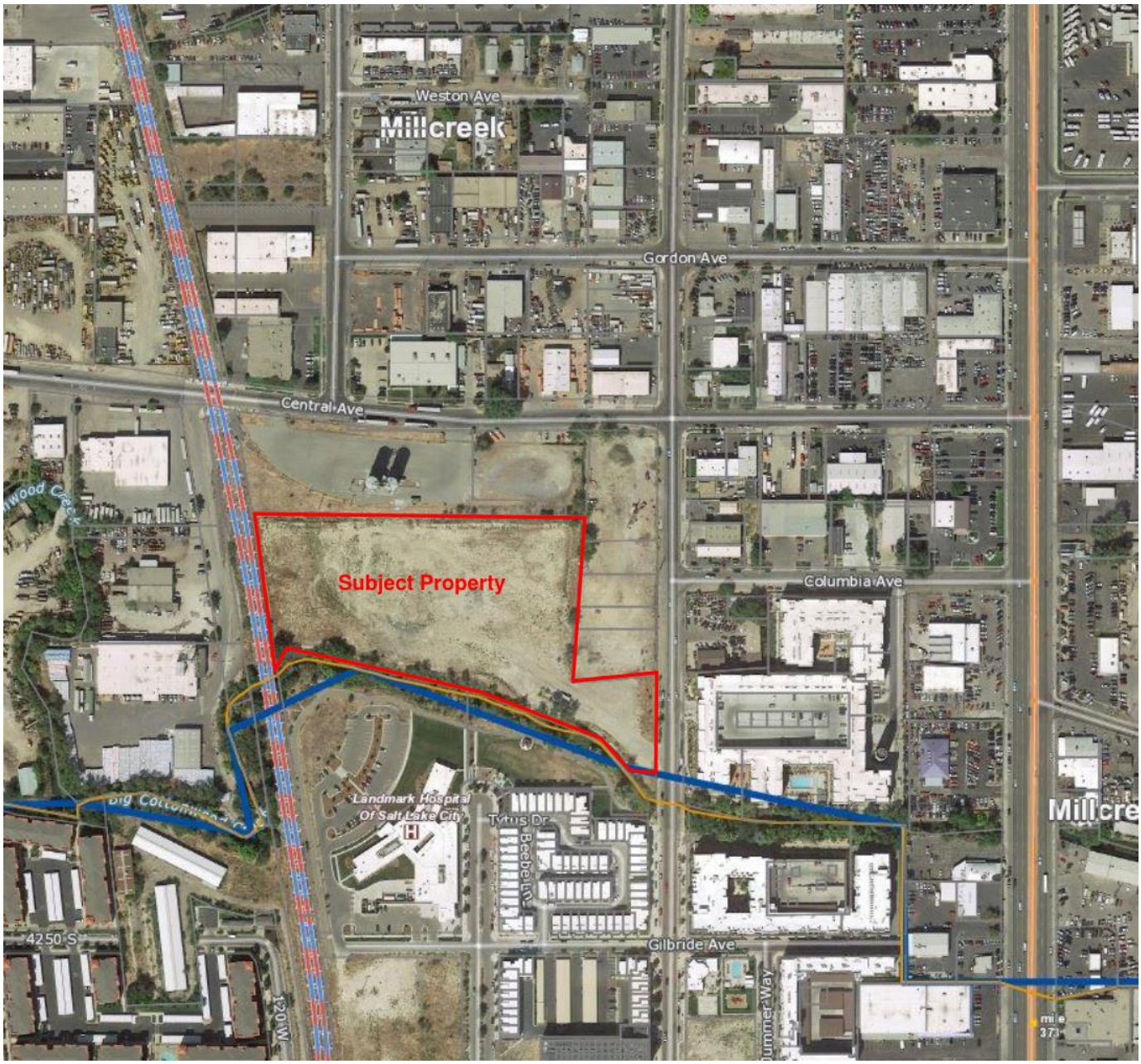
Clearwater Homes, LLC would like to have a new development agreement adopted to allow for 144 three-story townhomes with 7,500 square feet of commercial space. A portion of the townhomes will be platted for owner occupied dwellings, and a portion of the development will remain as a multifamily rental development. In addition, they would develop a 1.15 acre park with a playground which will be dedicated to the city, to include a pedestrian bridge across Big Cottonwood Creek.

Community Council Action

As per Chapter 2.56.100 of the Millcreek City Code, staff is seeking Millcreek Community Council input on the proposed PUD application. Specifically, if the proposal is an appropriate addition to the existing area, the council is encouraged to make recommendations concerning the application to the city planning commission.

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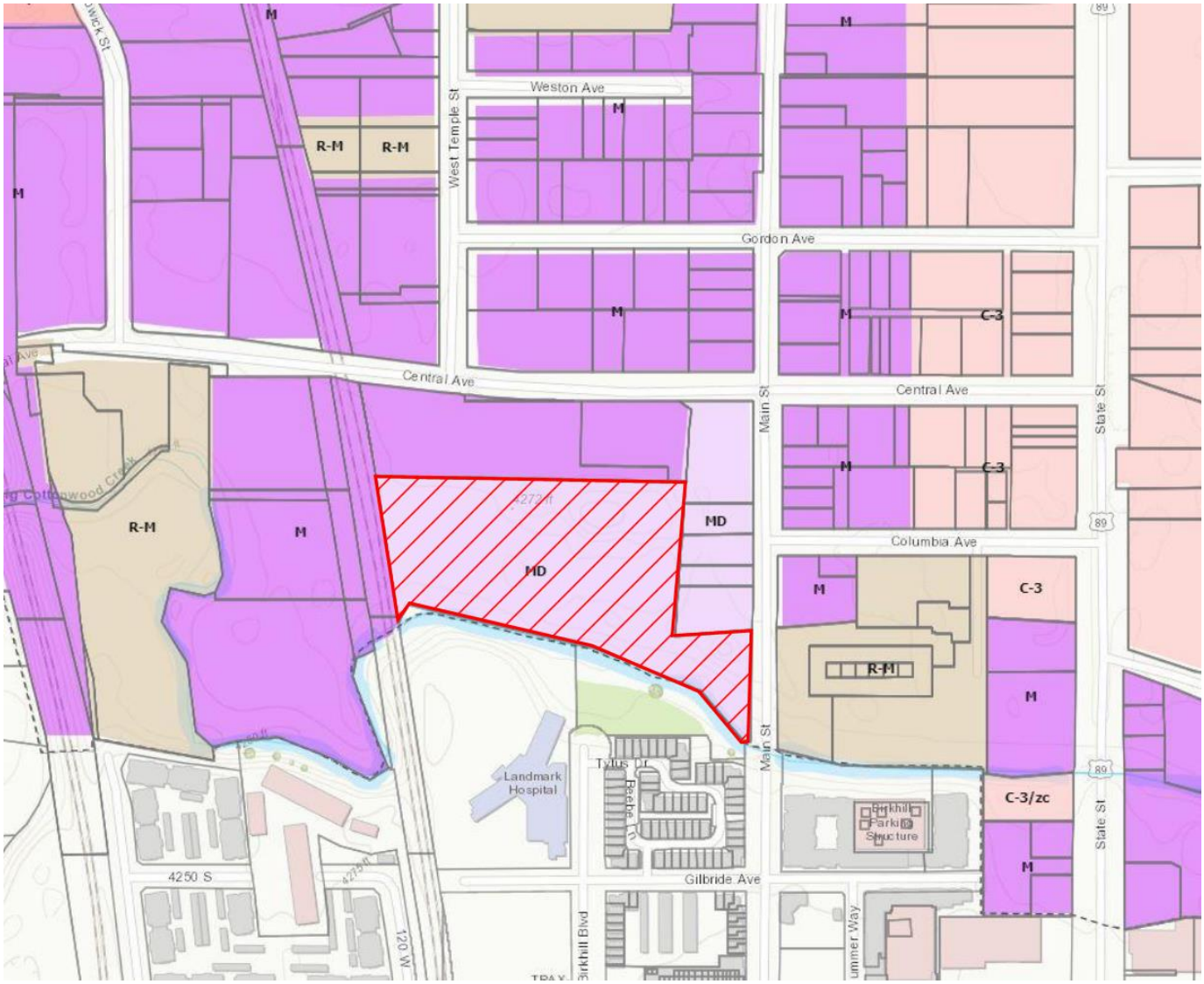
Aerial Map



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Millcreek, Utah 84106
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Vicinity Zoning

The parcel is adjacent to M and MD Zoning to the north, west and east with R-M zoning to the east (Artesian Springs). It borders Big Cottonwood Creek on the south with Murray City on the south side of the creek.



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Site Plan



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Park Plan



MILLCREEK COMMUNITY DEVELOPMENT
3330 SOUTH 1300 EAST
MILLCREEK, UTAH 84106

MEMORANDUM

To: **Community Councils**
From: **Francis Xavier Lilly, AICP, Director**
Date: **28 May 2019**

Re: ZT-19-002 – Amendments to Title 19 Regarding Noticing and Hearing Requirements for Land Use Hearings

Summary

Millcreek's zoning ordinance establishes a legal process where an independent land use hearing officer is appointed to hold a hearing and make a decision on the following matters:

a) Variances in General (19.92.050)
b) Variances to the Requirements of Floodplain Hazard Regulations (19.74.190)
c) Appeals of Planning Commission Decisions (19.76.035, 19.88.140)
d) Appeals of Conditional Use Decisions (19.84.070)
e) Appeals of Decisions by the Planning Director regarding Single- and Two-Family Dwellings (19.76.290)
f) Appeals of Decisions by the Planning Director regarding Minimum Parking Requirements (19.80.040)
g) Certain approvals of lots and buildings on private rights-of-way (19.76.080)
h) Clarification on zone boundaries (19.06.040)
i) Disputes of decisions made regarding the Geologic Hazards Ordinance (19.75.040)
j) Permits for the establishment of lots that are smaller than the minimum required by zone (19.76.090)
k) Alterations, Enlargements, Relocations, or Reconstructions of a Noncomplying Structure or a Structure Occupying a Nonconforming Use (19.88.040, -070)

Upon reviewing a number of recent applications to the Land Use Hearing Officer, staff is recommending two changes to the Millcreek Zoning Code regarding Hearings and Hearing Officer Requirements, particularly pertaining to expansion or relocation of a noncomplying structure. They are summarized as follows, and the proposed new text is in the attached ordinance, in red text and highlighted in yellow.

1. Staff is proposing a requirement that the city mail a written notice to property owners within 150 feet of a property subject to a land use hearing.

2. Staff is also proposing that notice and application shall be sent via e-mail to the chair of the community council for the area in which the subject property is located. Notices will be sent at least 10 calendar days prior to the hearing, and the notice will invite the recipient to submit evidence pertaining to the application at the hearing itself, or in writing at least three days prior to the hearing. This is in keeping with the provisions of Title 2 of our ordinance, which requires staff to send to the community councils "applications for extraordinary relief and exceptions to the City Code of Ordinances."

   Because a land use hearing is a *legal* proceeding, and not an administrative or legislative matter, staff is not recommending that the community councils provide a recommendation in a public meeting as they would for an item requiring planning commission or city council approval. However, the community council is

encouraged to submit evidence and participate in a land use hearing for a property in the community district, and notice will be sent to the Community Council Chair to that effect.

3. Staff is adding two additional findings that a land use hearing officer will be required to make regarding issuance of a permit for the addition, enlargement, moving, or relocation of a noncomplying structure or a structure occupying a nonconforming use. The additional findings borrow from the City's Residential Compatibility Overlay Zone Option C special exception language, and specifically call out building envelope requirements, if they are applicable to the application. The intent of these additional findings is to ensure that any enlargement or alteration of a noncomplying structure is compliant with the City's RCOZ requirements.

4. Staff is also proposing language that will empower the land use hearing office to impose limitations upon the issuance of a permit to mitigate adverse effects on other properties in the neighborhood. While this is an implied power of the land use hearing officer, and is stated explicitly with regard to variances, staff believes that making this power explicit with regard to noncomplying structure permits will result in better applications, and stronger grounds for approval or denial of a permit application.

Request

Staff is requesting a FAVORABLE recommendation to the Planning Commission regarding the proposed changes to Millcreek's land use hearing process.

Attachments

1. Proposed Zone Text Change

Chapter 19.88 NONCONFORMING USES AND NONCOMPLYING STRUCTURES

19.88.010 Continuation Of Use
19.88.020 Occupation Within One Year
19.88.030 Maintenance Permitted
19.88.040 Repairs And Alterations Permitted
19.88.050 Addition Of Parking Space
19.88.060 Expansion Of Use Permitted
19.88.070 Additions, Enlargements, Moving And Reconstruction Of A Structure
19.88.080 Nonconforming Use Of Land
19.88.090 Change Of Use
19.88.110 Restoration Of Damaged Structure
19.88.120 Abandonment Or One-Year Vacancy
19.88.140 Application To Have A Use Violation Declared Legal Through Special Exception
19.88.150 Application To Have A Structure Declared A Noncomplying Structure

19.88.010 Continuation Of Use

The occupancy of a noncomplying structure or of a building or structure by a nonconforming use, existing at the time this title became effective, may be continued, provided that the use has not been abandoned or the building left vacant as provided in MKZ 19.88.120.

19.88.020 Occupation Within One Year

A vacant building or structure may be occupied by a use for which the building or structure was designed or intended if so occupied within a period of one year after the use became nonconforming.

19.88.030 Maintenance Permitted

A noncomplying structure may be maintained.

19.88.040 Repairs And Alterations Permitted

Repairs and structural alterations may be made to a noncomplying structure or to a structure housing a nonconforming use. Any remodel or structural alteration that requires the demolition of an outside wall of a noncomplying structure shall only be allowed upon approval of the land use hearing officer, unless the new construction complies with the zoning ordinance. The land use hearing officer decision regarding applications for the removal and replacement of outside walls of a noncomplying structure shall be based upon the criteria outlined in MKZ 19.88.070(B).

19.88.050 Addition Of Parking Space

A building or structure lacking sufficient automobile parking space in connection therewith as required by this title may be altered or enlarged provided additional automobile parking space is supplied to meet the requirements of this title for such alteration or enlargement.

19.88.060 Expansion Of Use Permitted

A nonconforming use may be extended to include the entire floor area of the existing building in which it is conducted at the time the use became nonconforming.

19.88.070 Additions, Enlargements, Moving And Reconstruction Of A Structure

1. A noncomplying structure or building occupied by a nonconforming use shall not be added to or enlarged in any manner or moved to another location on the lot or reconstructed at another location on the lot except as provided by subsection B of this section unless such additions and enlargements comply with the regulations and intent of this title.
2. A building occupied by a nonconforming use or a noncomplying structure may be added to or enlarged or moved to a new location on the lot or reconstructed at a new location on the lot upon a permit authorized by the land use hearing officer, provided that the land use hearing officer shall find:

    a. The addition to, enlargement of, moving of, or reconstruction of the structure at a new location on the lot is in harmony with one or more of the purposes of this title as stated in MKZ 19.02.020, and is in keeping with the intent of this title;
    b. The addition to, enlargement of, moving of, or reconstruction of the structure at a new location of the lot is compatible with existing development within a reasonable distance in terms of height, mass and applicable building envelope requirements, and lot coverage; and
    c. The addition to, enlargement of, moving of, or reconstruction of the structure at a new location of the lot will not be detrimental to the health, safety and general welfare of persons residing within a reasonable distance of the subject property.
    d. That the proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or structure.
3. The Land Use Hearing Officer may impose conditions and limitations upon issuance of a permit for an addition to, enlargement of, moving of, or reconstruction of a structure as necessary to prevent or mitigate adverse effects on other properties in the neighborhood of the subject property, consistent with the standards of this Title.

19.88.080 Nonconforming Use Of Land

The nonconforming use of land, existing at the time this title became effective, may be continued provided that no such nonconforming use of land shall in any way be expanded or extended either on the same or adjoining property, and provided that if such nonconforming use of land, or any portion thereof, is abandoned or changed for a period of one year or more, any future use of such land shall be in conformity with the provision of this title.

19.88.090 Change Of Use

1. A nonconforming use may be changed to any use allowed in the most restrictive zone where such nonconforming use is allowed, provided the planning commission finds that such use would not be more intensive than the most recent existing legal nonconforming use.
2. Structures shall not be enlarged, removed, reconstructed or otherwise changed except for interior remodeling and exterior restoration or renewal that will make the appearance of the structure more nearly conform to the character of the area in which it is located.

3. The existing lot or parcel shall not be enlarged upon or modified except to create landscaping, fencing, curb, gutter and sidewalk, road widening or minimum off-street parking that will provide a safer and more compatible facility.
4. Any change of a nonconforming use to another nonconforming use shall be a conditional use and subject to provisions of MKZ 19.78 and MKZ 19.84, except that the proposed nonconforming use need not conform to the general plan.
5. The planning commission may approve a change of use pursuant to this title even though the nonconforming use may have been abandoned.

19.88.110 Restoration Of Damaged Structure

A noncomplying structure or a structure occupied by a nonconforming use which is damaged or destroyed by fire, flood, wind, earthquake or other calamity or act of God or the public enemy and not the result of the intentional or reckless disregard of the owners or occupants, may be restored and the occupancy or use of such structure or part thereof, which existed at the time of such damage or destruction may be continued or resumed, provided that such restoration is started within a period of one year and is diligently prosecuted to completion.

19.88.120 Abandonment Or One-Year Vacancy

A structure or portion thereof occupied by a nonconforming use, which is, or hereafter becomes, vacant and remains unoccupied by a nonconforming use for a continuous period of one year, except for dwellings, shall not thereafter be occupied except by a use which conforms to the use regulations of the zone in which it is located. If the use has not applied to the premises for a consecutive period of sixty days during any twelve-month period, the use shall be deemed abandoned.

19.88.140 Application To Have A Use Violation Declared Legal Through Special Exception

1. Whenever land or a structure is used in violation of this title, the owner may file an application with the planning commission to have the use declared legal through special exception. The planning commission may approve such an application only when the evidence establishes all of the following:

    1. The use exists on the property at the time of the application and has been in continuous violation of the zoning ordinance for a period exceeding ten years;
    2. No complaint has been made to the development services division concerning the violation for a period exceeding ten consecutive years during which the violation existed;
    3. Continuation of the use will not have a detrimental effect on the health, safety or welfare of persons or property in the vicinity.
2. The planning commission may consider as evidence:

    1. Documents that are part of the public record, such as tax appraisals, utility records, aerial photographs, building permits, etc.
    2. Documentation from third parties, such as affidavits, photographs, etc.

3. Documentation from current or past property owners, such as tax records, rental/lease agreements, appraisal records, etc.

In approving an application hereunder, the planning commission may set any conditions it deems necessary for protection of adjacent properties or the public welfare including provisions limiting the period of time the use may continue. This section shall in no way be interpreted to permit the continuation of any violation which exists on the effective date of the ordinance codified in this section. Any person shall have the right to appeal to the land use hearing officer a decision rendered by the planning commission pursuant to this section. Appellants shall follow the appeal procedures set forth in MKZ 19.92.

19.88.150 Application To Have A Structure Declared A Noncomplying Structure

Whenever a structure is in violation of the height or setback provisions of this title, the owner may file an application with the director or director's designee to have the structure declared noncomplying. The director or director's designee shall approve the application when the evidence clearly establishes the following:

1. The structure has existed at its current location, with the same size, height and setbacks for at least ten years;
2. The structure is found by the building official or designee to pose no threat to the health or safety of persons in or around the structure, and;
3. The City has not taken enforcement action for the violation for a period exceeding five consecutive years during which the violation existed.

Chapter 19.92 LAND USE HEARING OFFICER

19.92.010 Creation
19.92.020 Composition And Organization
19.92.030 Hearings And Due Process
19.92.040 Appeal And Time To Appeal
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19.92.010 Creation

A land use hearing officer ("authority") is hereby created pursuant to the terms of the Municipal Land Use, Development, and Management Act, Utah Code Ann. § 10-9a-101, et seq. It is the intent of the City council that the authority satisfies the requirement of the above referenced statute for an appeal authority to hear and decide requests for variances from the terms of the land use ordinance and appeals from decisions applying land use ordinances.

19.92.020 Composition And Organization

1. The authority shall consist of one member who shall be appointed by the mayor, with the advice and consent of the City council, for a term determined at the time of appointment.
2. Any vacancy occurring on the authority shall be promptly filled by the mayor with the advice and consent of the City council for the unexpired term of the member whose office is vacant.
3. The authority shall be organized as deemed appropriate and as approved by the Council.

19.92.030 Hearings And Due Process

1. Hearings of the authority shall be held as necessary. The authority shall not have ex parte contacts. The authority shall have authority to administer oaths, provide an opportunity for cross- examination, and direct the proceedings of the authority in a quasi-judicial manner, so that the due process rights of each participant are respected. All hearings shall be open to the public and shall be recorded.
2. **Notice Requirements.**
    a. Notice shall be mailed to owners of property that are within 150 feet of the property that is subject to a hearing of the authority, informing them of the time and date of the hearing, at least ten calendar days prior to the hearing.
    b. An application for a hearing of the authority shall be published on the City website at least ten calendar days prior to the hearing.
    c. Notice shall be provided to the chair of the community council for the area in which the subject property is located, at least ten calendar days prior to the hearing. Notice and a copy of the application shall be sent via electronic mail to the chair of the community council.
3. **Solicitation of Public Input.** Recipients of the notice described in 19.92.030(2)(a) may submit evidence pertaining to the application subject to a hearing of the authority. Evidence may be submitted at the hearing, or in writing to the City no sooner than three days prior to the hearing.

19.92.040 Appeal And Time To Appeal

1. Any person desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some beneficial interest in or any person adversely affected by a decision applying the land use ordinances, may file an appeal to the authority. The party taking the appeal shall file the appeal with the City recorder within ten (10) business days after the date that the land use authority issues its written decision. The appeal must include the filing of an application and payment of a fee as provided in the City's current fee schedule.
2. The appellant shall have the burden of proceeding and shall have the burden of proving that the land use authority erred.
3. The appeal authority shall determine the correctness of a decision of the land use authority in its interpretation and application of land use ordinances based solely on the record (factual matters shall not be reviewed de novo).

19.92.050 Variances

1. The authority shall have the following powers to authorize on appeal in specific cases a variance from the terms of this title. The authority may grant a variance only if:

    1. Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title;
    2. There are special circumstances attached to the property that do not generally apply to other properties in the same district;
    3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
    4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
    5. The spirit of this title is observed and substantial justice is done.
2. In determining whether enforcement of this title will cause unreasonable hardship, the authority may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought and comes from circumstances particular to the property, not from conditions which are general to the neighborhood. In determining whether or not enforcement of this title would cause an unreasonable hardship, the authority may not find an unreasonable hardship if the hardship is self-imposed or economic. In determining whether or not there are special circumstances attached to the property, the authority may find that special circumstances exist only if special circumstances relate to the hardship complained of and deprive the property of the privileges granted to other properties in the same district. The applicant shall bear the burden of proving that all the conditions justifying a variance have been met.
3. In granting a variance, the authority may impose additional requirements on the applicant that will mitigate any harmful effects of the variance or serve the purpose of the standard or requirement that is waived or modified.

19.92.060 Special Exceptions

The land use hearing officer may approve any of the following special exceptions to the zoning ordinance where he or she determines the exception is consistent with the purposes of the zoning ordinance and will not be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity:

1. Where a zone boundary line divides a lot in single ownership at the time of the passage of the ordinance codified in this title, the land use hearing officer may permit a use authorized on either portion of such lot to extend not more than fifty feet into the other portion of the lot.
2. The land use hearing officer may permit the enlargement of or addition to a noncomplying structure or a building or structure occupied by a nonconforming use.
3. The land use hearing officer may permit the relocation on a lot of a noncomplying structure or a building or structure occupied by a nonconforming use; or the hearing officer may permit the reconstruction on a lot of a noncomplying structure or a building occupied by a nonconforming use.