



**Minutes of the
Millcreek Planning Commission
December 16, 2020
5:00 p.m.
Regular Meeting**

The Planning Commission of Millcreek, Utah, met in a regular public meeting on Wednesday, December 16, 2020 at City Hall, located at 3330 S. 1300 E., Millcreek, UT 84106. The meeting was conducted electronically per Millcreek State of Local Emergency Directive No. 2 of 2020 and live streamed via the City's website with an option for online public comment.

PRESENT:

Commissioners

Shawn LaMar, Chair
Russ Booth, Vice Chair (absent)
David Allen (electronic)
Scott Claerhout (electronic)
Fred Healey (absent)
Victoria Reid (electronic)
Skye Sieber (electronic)
Tom Stephens
Ian Wright (electronic)

City Staff

Alexander Wendt, Deputy Recorder
Francis Lilly, Planning and Zoning Director
Erin O'Kelley, Planner (electronic)
Samah Safiullah, Planner (electronic)
Naba Faizi, Planning Permit Tech (electronic)
Kurt Hansen, Legislative Policy Director
John Brems, City Attorney (electronic)

Minutes by Alexander Wendt.

Attendees: Arnold Wilcox, Vicki, Tanner Webster, Allen Sowards, Jeffery Walton, Erin Koelikker, Genny Hayward, Calvin Close, Anya Harmon, and Harold Walk.

REGULAR MEETING – 5:00 p.m.

TIME COMMENCED: 5:19 p.m.

Chair LaMar called the meeting to order and read a statement explaining the duties of the Planning Commission.

1. Public Hearings

1.1 Consideration of SD-20-024, Requesting creation of a two-lot subdivision at 3896 Honeycutt Drive. Applicant Genny Hayward Planner: Erin O'Kelley

Erin O'Kelley, Planner, shared the scope of the application from her presentation. This lot is in a R-1-10 zone. The applicant would like to create a two-lot subdivision. There will be a small dedication along 3900 S. Ms. O'Kelley said the applicant intends to keep the single-family home if it meets setback requirements. On lot 2, there is a proposed public utility easement that is 18.7 feet. It is still expected that lot 2 would meet the setback requirements in a R-1-10 zone. A power pole is located on Honeycutt on the northeast side of proposed lot 2. There are many old growth trees. There are no public improvements on Honeycutt. The applicant would be

required to put in full curb, gutter, and sidewalk as a requirement for the subdivision. Community councils are not required to provide a recommendation. There is a PUD on 3900 S. and the President of the HOA reached out with concerns about increased density, a decrease in lot size, removal of mature trees, an increase in traffic, and concern about the height of a potential home on lot 2. Staff said properties range from .17 to .5 acres. The new lot would still meet zoning rules. Some trees must be removed for the public improvements.

Commissioner Reid asked if there is a tree replacement plan. Ms. O'Kelley replied that single family lots are not regulated by the City landscaping ordinance. Commissioner Reid encouraged the creation of a plan for single family lots. Ms. O'Kelley said that the applicant will be taking inventory of the trees and then create a plan for trees removed due to public improvements. Chair LaMar asked if the fence on 3900 S. would be removed. Ms. O'Kelley said that the applicant will be required to sign an agreement that they understand that at any time the City could require movement of the fence in the right-of-way. Commissioner Sieber asked about the public concerns about height and asked what kind of home is going in on lot 2. Ms. O'Kelley said it would be subject to height requirements in the R-1-10 zone and can be 30 feet tall. The home would still have to meet Residential Compatibility Overlay Zone (RCOZ) requirements. An 18-foot setback can help with the loss of view for the neighbor to the north.

Applicant, Genny Hayward, said that the proposed home for lot 2 is 27 feet tall and that they are 99% sure that the height of the home will remain that way. Her plan for the trees is to keep almost all the mature trees. One dead tree fell during the windstorm. Commissioner Reid asked what kind of condition the applicant would be okay with as far as a tree plan and if any trees would be taken out. Ms. Hayward said they would not take out more trees than needed to put a driveway in. Ms. O'Kelley said the best condition to put in is to require the following of the current tree preservation plan. If the applicant removes trees, they need to replace them with the equivalent tree on their own property. Francis Lilly, Planning Director, said they would replace the tree with an equivalent tree. Commissioner Wright said there was a concern about density, but the plan sounds like a single-family home. Ms. O'Kelley said the residents see a trend of lots being cut up in size and they do not want more density in their neighborhood.

Chair LaMar opened the public hearing.

Calvin Close, 3836 Honeycut, stated he is concerned about the height of the house. His house is a single level with solar panels, and he does not want them blocked with a two-story house. He also questioned where the driveway would be. Applicant, Ms. Hayward said the driveway will be roughly in the center. Mr. Close reiterated that he was concerned about the height of the house.

Chair LaMar closed the public hearing.

Commissioner Stephens said that Millcreek has an ordinance that restricts the height of the home. Ms. O'Kelley said that on the preliminary plat to the north the setback for the public utility is 18 feet. The additional distance will allow for additional sunlight. Chair LaMar said that looking at the overhead view of the property it appears that a 27-foot home would not restrict sunlight.

Mr. Lilly recited a comment from the online comment box from Allen Sowards, Garden Avenue. *"It seems odd to require a private homeowner to comply with tree preservation. All other homeowners are free to do what they deem necessary. New construction will require a lot of tear down. Also, if they want a yard, it may not be possible to replace trees for like kind trees. Is this an undue burden for this owner?"* Mr. Lilly explained that Mr. Sowards is a member of the Millcreek Community Council.

Mr. Lilly explained that if someone buys an existing subdivided lot, they can take out trees, but by dividing a lot the Millcreek code chapter 19.77 triggers the requirement to add trees. Mr. Lilly said as he read the code, they are subject to the tree preservation standard. Chair LaMar said they must follow the law but not have overdue burden. John Brems, City Attorney, stated his agreement. Commissioner Sieber asked if there is a problem with putting trees in the dedicated easement. Ms. O'Kelley said the applicant can re-landscape in the easement. Chair LaMar asked if there were more comments. There were none.

Commissioner Stephens moved to approve SD-20-024, the preliminary plat approval subject to the conditions stated in the staff report plus the condition that the applicant comply with the Millcreek Ordinance 19.77.040 and give positive recommendation to the City Council. Commissioner Sieber seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.

1.2 Consideration EX-20-007. An Application to have a use of violation declared legal through special exception at 2975 S Grace Street. Applicant: Erin Koelliker. Planner: Samah Safiullah

Samah Safiullah, Planner, explained that the existing parcel is a single-family lot in the R-1-8 zone and the neighborhood is primarily zoned as R-1-8 as well. The zones are residential single-family with a minimum lot size of 8,000 square feet. From her research, the home has been in existence since at least 1951. The applicant is asking for the duplex to be declared legal through special exception. Ms. Safiullah showed the basement entrance and the entrance to the primary dwelling. For an application to be declared legal through special exception the use must exist on the property at the time of the application and have been in continuous violation of the zoning ordinance for a period of time exceeding ten years, no complaints have been made to the development services division concerning the violation for a period exceeding ten years, and continuation of the use will not have a detrimental effect on the health, safety, and welfare of the persons or property in the vicinity. The application was taken to Canyon Rim Citizens Association and they gave a positive recommendation. Staff analysis includes that one of the two units must be owner occupied per the accessory dwelling unit (ADU) draft. Staff recommendation is that the use of the property has been in continuous violation of the zoning ordinance for at least 20 years. Staff does not have any evidence of a complaint being made to the development services division. If the property can meet applicable codes for adding an additional legal dwelling to the property such as meeting off-street parking ordinances, staff does not feel this application will have a detrimental impact to neighbors. Commissioner Stephens said that if they approve it without one of the owner units being occupied then it would not have to comply with a future ADU ordinance. Ms. Safiullah said there would have to be an inspection before a business license is issued.

Applicants Erin and Rob Koelliker, 3219 S Metropolitan Way, said they are trying to buy this property but to get financing they have to have the basement declared legal. They plan on living in the home.

Chair LaMar opened the public hearing.

Bob and Rae Lortsher, 2993 S. Grace Street, provided the following written comment. *"It is our understanding that the applicant wants to have this home zoned to allow for a mother-in-law apartment. We have no problem with that, but we would not want it to be allowed to be a rental unit. We would prefer a stipulation added that says it will be occupied by a family member only. We would like to keep the street a true residential area."*

Jeff Walton, 2999 S. Grace, provided the following written comment. *"I live at 2999 Grace St. a few doors south of the referenced project. I am unable to attend the meeting on Wednesday, but I wanted to let you know I am in favor of the special exception that is being requested by Erin Koelliker. I have spoken to the Koelliker's about the project and I have no objection. Please feel free to contact me if you have any questions, and please reply to this email so that I know you have received my input."*

Anya Harmon, 3061 S. Grace, said it would be an improvement if the applicant is allowed the special exception. The home has been empty, and people living there and beautifying the home would be nice. Ms. Harmon said the applicant would pick great renters. It would be great if they can move forward.

Jeff Walton, 2999 S. Grace, said the prior owners had a large family and there is no way there will be as many cars at the current home as there was historically. It will be a large improvement to the neighborhood and the street.

Harold Walk, 2962 S. Grace, said it would be an improvement to the neighborhood because the property was neglected for years.

Chair LaMar closed the public hearing.

Commissioner Allen said he did not see any problems with the application, and it is impossible to enforce renting to a family member. Commissioner Reid asked if the owners rent the home now. Ms. Koeliker said the home is empty.

Commissioner Sieber moved to approve the special exception to have the second unit declared legal including the three conditions presented in the meeting. Commissioner Allen seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.

2. Continuing Business

2.1 Consideration of ZM-20-009. Requesting to rezone from R-1-10 to R-1-5. Applicant Tanner Webster. Planner Samah Safiullah.

Samah Safiullah, Planner, presented the existing conditions of the property. The applicant is proposing to rezone property located 4396 South Garden Drive and it is currently zoned R-1-10. The parcel to the south of the property is zoned as R-1-5. The surrounding properties make-

up a mixture of R-1-10, R-2-10, R-M, and R-4-8. The applicant has the intent of subdividing the parcel into two narrow lots and building two small side-by-side single-family homes, subject to a development agreement with the City. The development agreement will place regulations on the future development of the lot, including setbacks, height, slope of roof, building envelope, lot coverage, etc. The parcel has a boarded up single-family dwelling. They plan to split the lot and build two small homes. The General Plan is not contradicted by the application. Development plan agreement considerations include: only single-family detached dwellings are permitted; 30-foot front yard setback, 20-foot rear yard setback, 8-foot side setbacks; dwellings will be no higher than 28 feet measured from original ground surface; dwellings for each lot must incorporate a minimum 3/12 pitch roof; rezone area is subject to a maximum of only 2 lots; each dwelling will incorporate a two-car garage that is at minimum 20' width x 22' length; each lot will have driveways measuring at minimum 20'x22' and capable of parking two automobiles; driveways may not block sidewalk or impede pedestrian travel in any way; landscaping Millcreek code chapter 19.77 will be enforced on the newly established residential single-family homes; dwellings will be subject to all remaining RCOZ standards.

Ms. Safiullah said On November 24, 2020, the applicant hosted a neighborhood meeting where several residents were in support of the proposal and one resident did not support it. The Millcreek Community Council recommended the rezone be adopted with the recommended zoning condition of a 30-foot front yard setback which was incorporated into the development agreement. Commissioner Stephens asked Ms. Safiullah if there were specific standards that she would like to suggest. She said that she does not have additional standards beyond the report. Chair LaMar asked if the site plan has changed since the Commission's meeting packet. It is a cleaned-up version said Ms. Safiullah, the setbacks are the same.

Applicant Tanner Webster, 1626 E. Downingtown Avenue, said he does not own the property and is doing this for the owner. The main concern is about an increase in density, so they adjusted the site plan to make the lots feel less dense. Commissioner Claerhout asked if the current home is occupied. Mr. Webster replied no, it is not habitable. Commissioner Claerhout asked if it is dilapidated. Mr. Webster said yes.

Allen Sowards said that he is on the Millcreek Community Council, he abstained in the vote. He thinks there are more comments and would like to communicate more from what neighbors have told him. Chair LaMar said he would come back to these comments during the public hearing.

Chair La Mar opened the public hearing.

Allen Sowards, 4315 S. Garden Drive, said the neighbors say they would prefer to see a single-family home, and the developer was going to do a flag lot which the neighbors liked less. RCOZ should still apply according to his understanding. They want to preserve the space around the neighbors. Ms. Safiullah replied that RCOZ applies and the building permit will enforce the building envelope. Mr. Lilly said that the ordinance changed and now requires an elevation certificate to measure against existing grade.

Arnold Wilcox, 4371 S. Garden Drive, said he agrees with Mr. Sowards. They would prefer to see a single home on the lot.

Pam Smith, 4383 S. Garden Drive, provided written comment. *“Living right across the street for 25 years. Strongly oppose the rezone. Strongly oppose the increase in density. The addition of the house will ruin the character of the neighborhood. We are against the increase in traffic. Nobody in this neighborhood wants it. The second stories will be incompatible with the rest of the neighborhood. The people in the apartments do not want this rezone granted.”*

Chair LaMar closed the public hearing.

Commissioner Stephens asked Mr. Lilly if there are other design standards to ensure more attractive homes. Mr. Lilly said the 3/12 pitch is a nice concept. Mr. Lilly suggested a brick veneer or fiberboard of at least 30%. Mr. Webster said he is happy to accommodate on design standards. Commissioner Claerhout asked if there was a plan to destroy the current home and build one home. Mr. Webster said it is not financially feasible to build one home. Commissioner Claerhout asked if they had applied for a construction loan for the lot. Mr. Webster said that he is a residential broker and from previous experience it does not make financial sense. Chair LaMar said that usually he is not in favor of a rezone that is not in harmony of the neighborhood. It appears that each lot would be almost 10,000 square feet per lot. He said the current home sticks out because it is in severe disrepair. Chair LaMar said the staff recommendations are a good way to clean the property up. Commissioner Reid asked what the applicant would do if the Commission turned the rezone down. Mr. Webster said he would do nothing, and the house would sit there until it becomes economically viable. Commissioner Allen said he thinks the request was close to the existing zoning, so he is fine with the project. Commissioner Wright said he is concerned that many neighbors have expressed frustration, but he is in favor of the project. Commissioner Stephens said he is in favor of the rezone if there is a condition that all façades shall not be less than 30% brick. Mr. Webster said that there is a house on the street that he wishes to emulate. Commissioner Stephens recommends that the Commission implement the brick recommendation. Commissioner Reid said that homes can be 28 feet and asked the applicant if they would build a 2-story home. Mr. Webster said their plan is to build a 22-foot home, or thereabouts. They are also planning on a basement. Each home would be 2,700 square feet with a 900 square foot basement.

Commissioner Allen moved to approve the rezone request ZM-20-009 to rezone the property from R-1-8 to R-1-5, subject to the conditions in the staff report and the condition that the exterior of the home be 30% brick. Commissioner Stephens seconded. All Commissioners present voted yes. The motion passed unanimously.

3. Business Meeting

3.1 Updates from the Planning and Zoning Director

Mr. Lilly thanked the Commission for their service in the weird year of 2020. In the first meeting of 2020 they must elect a new chair, so the Planning Commission should think about who they want to elect.

3.2 Ordinance Updates – Accessory Dwelling Units

Erin O’Kelley, Planner, gave an update on the ADU draft ordinance. The proposal recognized attached and detached units with different requirements. The ADU must be on an owner-occupied, single-family lot. Residents in the City’s prior Townhall meeting wanted the ability

to have detached garage ADUs. Feedback from Salt Lake City showed that having a detached ADU be a conditional use permit is a large burden. They must still meet certain design requirements. One parking stall for bedroom is required. The current draft allows for detached ADUs on a flag lot. There are area requirements for detached ADUs, setbacks are 8 feet from the side property line, maximum height is 24 feet for accessory structures. Detached ADUs are not eligible for short term rentals in the current draft. As a result of allowing detached ADUs, owners must pick three design options from a list. These are directly related to concerns from public engagement done in the last year. Windows must face the interior of a lot, or windows must be translucent, open parking for an ADU cannot be located within 8 feet of a property line, ADU parking in a garage, or the ADU must be one story with a maximum height of 18 feet. Planning must still conduct a site plan review. Staff will review for compliance and reserve the right to contact engineering. There must also be a building inspection. Ms. O'Kelley said they are taking the draft ordinance to the community councils in January.

Commissioner Allen asked if Ms. O'Kelley wants input on the draft. She said she would like input. Commissioner Sieber asked how people access a corner ADU. Ms. O'Kelley said that access to the ADU depends on the lot. People who have wide enough setbacks will probably allow people to add driveways and park in the back. Commissioner Stephens asked why there is not a minimum size ADU. Ms. O'Kelley said they have not explicitly decided on it; it would exclude people who want to do tiny homes. Commissioner Stephens said he does not prefer the 8-foot setback and prefers the 15-foot setback. Ms. O'Kelley said that detached ADUs have the 8-foot setback. Commissioner Stephens asked what the rationale is behind on-street parking. He expects that people will have one bedroom and the rule is that they must have one off-street parking per bedroom, but people will have two cars. Ms. O'Kelley said they can put a note in that increases the parking requirement on the property. Commissioner Stephens asked about short-term rentals in attached units but not detached units because short term rentals do not enable people to buy homes, he was in favor of not allowing any short-term rentals for any ADU. Ms. O'Kelley said that short term rentals are allowed in single family homes now, which is why they did not prohibit it for attached homes, a business license is required. Commissioner Stephens said that it is possible to change the short-term rental code to account for the potential proliferation of ADUs. Mr. Lilly said that in the short-term rental ordinance there is a limit on how many there are allowed. Alex Wendt, Business License Administrator, said the number of short-term rental licenses is 30 short term rentals in each council district boundary. If that number is reached, the application will be placed on a wait list. If someone does not renew, they must reapply for a new business license and go through the inspection process again. Chair LaMar said that new ADU owners need to provide enough hard surface parking to accommodate parking.

Commissioner Wright clarified if all windows or all significant windows must face the interior of the lot. Ms. O'Kelley replied the windows must be interior facing or translucent. Commissioner Wright said that some units are awkwardly placed where ADU doors open to the neighbor's yard. Ms. O'Kelley said that the fencing requirement will help alleviate some of the privacy concerns. This helps address the entrance location for a detached ADU. Commissioner Allen said that a perimeter fence means that many homeowners would have to knock down existing vegetation, if the setback requirements are met then it should not matter whether it is a single-family home or ADU. Chair LaMar asked for the setback of a detached garage. Ms. O'Kelley said the setback for a garage 14 feet in height or less is 30 inches. Commissioner Claerhout asked if people will build garages and then turn them into an ADU.

Ms. O'Kelley said that per this draft, people would be allowed to do that. Chair LaMar said that the draft should close that loophole. Ms. O'Kelley said if there was a detached garage that did not meet the requirements, they would have to go through a land use hearing. Mr. Lilly said that conversion could apply to units only in existence at the time the ordinance was passed. Mr. Lilly said that Ms. O'Kelley and John Brems, the City Attorney, have worked very hard on this project.

3.3 Discussion on RM and Planned Unit Development (PUD) Updates

Mr. Lilly said staff was going to restructure the standards and code for the residential multifamily zone. The standards are like the code now. They have created a consolidated development table where staff can look side by side at the development requirements based on building type. Multifamily dwellings will be limited to 200 feet like the City Center Overlay Zone (CCOZ). Anything above a 4-family dwelling, the side yard must have 20-foot setbacks. But these are only for larger multifamily dwellings. There will be bigger setbacks on front and side yards for dwellings that are 5-family dwellings and greater. Minimum driveway width will be 25 feet. This will help strengthen the fire code. 20 feet is simply too narrow said Mr. Lilly. Some developers push back on this. But the goal is to create a livable situation where people can grow into the space for a trailer or larger car. Materials requirements have been updated, with an emphasis on brick and stone. The Planning Commission seems comfortable granting parking reductions up to a point, but there is a point at which the Commission grows uncomfortable. Mr. Lilly added a stop on the maximum amount of parking reduction to 25%. Staff would benefit from a robust application process like the one in CCOZ. This will help people be more descriptive in their application process before the application comes to the Planning Commission. Mr. Lilly said that if the Planning Commission would like, they could hold a work session to go over the new RM code proposal.

Commissioner Sieber asked about a renewable energy incentive in the PUD Code. Mr. Lilly said that he will add it. Commissioner Sieber saw that some developments used materials on site to create planters or retaining walls thereby reusing materials keeping them out of landfills. Mr. Lilly said that he liked the suggestion. The planning and development ordinance is easier to fix than the RM code, but it will be challenging for a PUD in the RM zone. The concept of abutting or contiguous does not work anymore. Street typology has changed, new definitions are used. In the past, Mr. Lilly has heard that a PUD needs enough units for the HOA to be able to cover repairs. For example, in case the connection to city sewers fails. Staff would like to add wordage developments with at least 150 feet of frontage, along a right-of-way, and 60 feet in width are exempt from the minimum acreage requirement but shall have at least 80 units. This is consistent with the C and RM zone. Staff picked 150 feet of frontage to have a PUD where houses that front streets even if they access a side lane. The PUD feels more like it is part of the neighborhood. If a new road is built in Millcreek it must be 60 feet to accommodate two lanes, sidewalk, curb, gutter, and park strip. There are many roads in Millcreek that do not meet this requirement. Driveway requirements are still 25 feet to prevent argument from developers. The proposed zone will meet the current garage code. The PUD code currently has its own parking requirements. Staff will be taking that out, so the requirement matches the RM zone. Mr. Lilly said they are adding street trees requirements to the PUD and RM code. The old code used a height definition that the City does not use anymore. This will be changed to meet other requirements. Maximum height is 28 feet and is still subject to RCOZ. If a developer would like to create a PUD in the commercial zone it must be a mixed-use building.

4. Calendar of Upcoming Meetings

- City Council Special Meeting, 12/21/20, 6:30 p.m. at City Hall
- City Council Meeting, 01/11/21, 5:00 p.m. at City Hall
- Planning Commission, 01/20/21, 5:00 p.m. at City Hall

ADJOURNED: Commissioner Allen moved to adjourn the meeting at 7:36 p.m. Commissioner Claerhout seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.

APPROVED: _____

Shawn LaMar, Chair

Date

FEB 17, 2021

Attest: _____

Elyse Sullivan, City Recorder