



**Minutes of the
Millcreek Planning Commission
October 19, 2022
5:00 p.m.
Regular Meeting**

The Planning Commission of Millcreek, Utah, met in a regular public meeting on Wednesday, October 19, 2022, at City Hall, located at 3330 S. 1300 E., Millcreek, UT 84106. The meeting was conducted electronically and live streamed via the City's website with an option for online public comment.

PRESENT:

Commissioners

Shawn LaMar, Chair
Victoria Reid, Vice Chair
Aryel Cianflone (excused)
Scott Claerhout (electronic)
David Hulsberg
Christian Larsen (electronic)
Nils Per Lofgren (excused)
Skye Sieber (excused)
Ian Wright (excused)

City Staff

John Brems, City Attorney
Elyse Sullivan, City Recorder
Francis Lilly, Planning & Zoning Director
Kurt Hansen, Facilities Manager
Fred Lutze, Planning Engineer (electronic)
Carlos Estudillo, Planner
Robert May, Long Range Planner
Sean Murray, Planning Admin. Asst.
Jen Smith, Staff Engineer (electronic)

Attendees: Alisha Hammett (electronic), Rachelle Gebler (electronic), Tom Otteson (electronic), Thomas Mazejy (electronic), Cesar Olivas (electronic), Matt Haberman, Gonzalez, Jane Dudley, Roger Dudley, Mark Chandler, Ralph Midgley, Mark Henson, Chip Spencer, Warren Lloyd, Won Shim, Matt Haberman, and Todd Reeder

REGULAR MEETING – 5:00 p.m.

TIME COMMENCED: 5:08 p.m.

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

1. Public Hearings

1.1 Consideration of RC-22-002, Request for a Residential Compatibility Overlay Zone (RCOZ) C Special Exception to Build a Single-Family Dwelling that Exceeds Height Limitations of the R-1-10 Zone Location: 4347 S. Garden Drive Applicant: Jeff Hadlock Planner: Carlos Estudillo

Carlos Estudillo said the Gonzalez family was seeking to construct a new residence on a lot located at 4347 S. Garden Dr. Their representative, Jeff Hadlock, asserts that the lot features a difficult layout, and it is on this basis that they are seeking a special exception to the city's Residential Compatibility Overlay Zone (RCOZ) standards. Specifically, they are requesting an exception to the building envelope for a residence in the R-1-10 zone. This building envelope exception would extend through most of the width of the residence. The lot is unproportionally enough to not uniformly fit portions of their proposed residence within the

RCOZ building envelope. The applicant was not requesting any other exceptions to the RCOZ requirements. Estudillo said that staff must first review compliance with RCOZ options A or B before moving to option C. Option C requires an evidentiary hearing with the burden of proof on the applicant. Per code, the applicant must demonstrate:

- The proposed residence will be in harmony with the purpose of this chapter, the general plan and any other land use document applicable to the area.
- The proposed residence will be compatible with existing residential development within a reasonable distance in terms of height, mass, and lot coverage, with particular focus on the proximate neighborhood.
- The proposed residence will not be detrimental to the health, safety and general welfare of persons residing within a reasonable distance, with particular focus on the proximate neighborhood.
- Each point on the highest ridge of the structure will be no more than forty feet above the point on the original grade vertically below it (with allowances for chimneys and vent stacks).
- The front yard setback will be at least eighteen feet. (19.71.050 (A)(2))

The ordinance then establishes criteria by which an applicant can show that their situation is “unusual or extraordinary” as stated in the RCOZ intent language. Specifically, the Planning Commission can evaluate the following in deciding whether or not to grant an RCOZ C special exception:

- Unusual lot shape.
- Unusual or difficult terrain.
- Drainage problems.
- Situations that appear not to be clearly addressed by the provisions of Options A or B. (19.71.050 (A)(3)).

Estudillo said the applicant was proposing construction of a residence that would be two stories on the front elevation and would not exceed 29 feet in height. The height of the proposed residence would be under the maximum allowed height, but the structure would be limited by the RCOZ building envelope. The RCOZ building envelope requirement exists to promote public welfare and to balance neighborhood compatibility with the private property interests of those who wish to expand, develop, improve, or otherwise make exterior modification to their residential property. The design of this home would not affect any neighbors’ view to the west, east, or south.

Estudillo showed the commission the proposed site plan. R-1-10 lots have more than 10,000 square feet and 65 feet in width. The subject lot is reduced in size with 8,475 square feet and 50 feet of frontage. He showed the commission the proposed building elevations. The building did not exceed the 30-foot height limit, but was not compliant on the east and west elevations due to the reduced width of the lot. Staff requested the commission consider the following questions:

- Is the lot at 4347 S Garden Drive unusual or extraordinary?
- Will the proposed residence be in harmony with the purpose of this chapter, the general plan and any other land use document applicable to the area?
- Will the proposed residence be compatible with existing residential development within a reasonable distance in terms of height, mass, and lot coverage, with particular focus on the proximate neighborhood?

- Will each point on the highest ridge be no more than forty feet above the point on the original grade vertically below it?
- Will the front yard setback be at least eighteen feet?
- Should the planning commission find that the exception should be granted? If so, are there conditions and limitation upon the approval of the exception to mitigate adverse effects on other properties in the neighborhood of the subject properties, consistent with the findings of this chapter?

Estudillo said the RCOZ standards establish a proximate neighborhood of 150 feet from the property boundaries of the affected properties. This designation is intended to establish a common standard for neighborhood compatibility. In the case of the applicant, the proximate neighborhood includes eight single-family homes. He presented a table of the proximate neighborhood lot characteristics. The neighborhood did not have unusual lots except for 4361 S. Garden Drive, which shares the same characteristics as the subject lot, but it has no structures and is used as a pedestrian access to property owned by Granite School District. Staff analysis suggested that the Garden Drive neighborhood has an inconsistent aesthetic in terms of building bulk, mass, materials, and height, and that recent home additions demonstrate architectural freedom, yet were also completed in a manner compliant with RCOZ, without need of a special exception. Estudillo provided his answers to the questions posed to the commission. He concluded that the applicant does meet the threshold requirement of having a lot that is faced with unusual circumstances and requests that the applicant does not propose any modification that will further extend the building mass nor elevate the height of the building, to not only stay away from obstructing views but to also be in harmony with the neighborhood.

Chair LaMar asked if the RCOZ overlay occurred after the lot was already subdivided. Lilly said the lot was subdivided prior to the zoning for the area, in the 1950s, as discovered in a title search. Commissioner Hulsberg asked if the neighboring narrow lot had an access easement on it. Estudillo said the Board of Education of the Granite School District owned that lot. Commissioner Hulsberg asked if the proposed basement would be used as an accessory dwelling unit. Estudillo was unsure.

The applicant declined to comment.

Chip Spencer, Millcreek Community Council, said the council recommended approval of the RCOZ exception but requested an address change of the subject property to differentiate it from the lot to the north.

Chair LaMar opened the public hearing.

There were no comments.

Chair LaMar closed the public hearing.

Commissioner Larsen supported the exception because the lot was unique to the neighborhood, however he noted there were similar lots in western Millcreek and building envelope restrictions should be reconsidered for narrow lots. Chair LaMar supported the exception and appreciated the adjacent lot being open.

Chair LaMar re-opened the public hearing.

Gonzalez, 4309 S. 1100 E., said there were no immediate plans to operate the basement as an apartment, but it may be an option in the future. The owners would reside on the property.

Chair LaMar closed the public hearing.

Commissioners Hulsberg and Reid supported the application.

Commissioner Larsen, regarding RC-22-002, request for a Residential Compatibility Overlay Zone C special exception to build a single-family dwelling that exceeds height limitations of the R-1-10 Zone at 4347 S. Garden Drive, moved the Planning Commission approve the special exception as presented by staff. Commissioner Reid seconded. Chair LaMar called for the vote. Chair LaMar voted yes, Commissioner Reid voted yes, Commissioner Claerhout voted yes, Commissioner Hulsberg voted yes, and Commissioner Larsen voted yes. The motion passed unanimously.

1.2 Consideration of FC-22-004, Request for a Slope Waiver to Construct a New Single-Family Dwelling in the Foothill and Canyons Overlay Zone (FCOZ) Location: 3733 S. Choke Cherry Drive Applicant: Won Shim Planner: Carlos Estudillo

Carlos Estudillo said the Gebler family and their architect, Won Shim, were seeking to obtain a slope waiver for slopes over 30% at 3733 S. Choke Cherry Dr. The original application is for a single-family residence, which falls in the Foothills and Canyons Overlay Zone (FCOZ). This is a permitted use, yet the proposal must undergo an FCOZ review before approval, during which a discrepancy was discovered in the original platted buildable area and the line demarcating the allowable buildable slope for the property. The owners have moved forward believing that the plat and the buildable area as originally defined for this lot of record would be honored. Staff directed the applicant to submit for a hearing seeking a slope waiver to allow this permitted use and otherwise zoning/planning compliant home to be built. The parcel is part of the Taylor Estates Subdivision, recorded in 1996 by Salt Lake County, and is thus a "lot of record" as defined in Millcreek Code 19.72.200. Prior to the adoption of FCOZ, the subject property was in the R-1-10 zone and was not subject to the Hillside Protection Zone standards in effect at the time. Despite acute and challenging topography, the lot was created as though it was a standard R-1-10 lot. Estudillo highlighted the subdivision plat and the buildable area for the lot.

Estudillo provided history on the area. Between 1953 and approximately 1996, the subject parcel and a large majority of Olympus Cove had been under a zoning designation that has only required a minimum lot area of 10,000 square feet. Historically, the parcel has been under the R-1-10 zone, requiring 10,000 square feet in 1979, which predates the Foothills and Canyons Overlay Zone; however, it did not encompass the subject area until the late 1990's. In 1996, the Board of County Commissioners approved an ordinance that amended Title 19 which, among other significant changes to the zoning code, repealed the 1980 Hillside Protection Zone and re-enacted the Foothills and Canyons Overlay Zone. This also included a new site development and design standards chapter. Prior to the aforementioned amendment the subject property was not located in the Hillside Protection Zone. It was not until 1996, when the adoption of the new Foothills and Canyons Overlay Zone encompassed

the property that it became subject to the FCOZ requirements. It is believed that much of the un-developed property in Olympus Cove at the time of the adoption of the new FCOZ was to be included in the boundaries of FCOZ as a precaution for future development of these areas. The current FCOZ requirements were not taken into consideration when the Taylor Estates Subdivision was recorded by Salt Lake County, so an alleged buildable area was recorded with the plat without considering the FCOZ's Slope Protection (19.72.060) chapter, which states, "Unless otherwise allowed in this Title, no development activities, including clearing, excavation, grading, and construction, are allowed on slopes greater than thirty percent (30%)." During the Pre-FCOZ application, staff requested a slope study to review the percentages of slope within the buildable area presented on the recorded plat, which assesses that several areas within the recorded buildable area exceed the maximum allowed slope grade of 30%. He showed the commission the proposed site plan on top of a topographical map illustrating the slope and grade percentages with the plat's buildable area line.

Francis Lilly said the Taylor Estates plat may have prompted the County to adopt FCOZ. He said the lot was very unusual and not the type of lot that would be created in the present. Estudillo showed the commission the proposed low-profile single family dwelling renderings and plans with the associated building materials. The only portion of the lot below the 30% grade threshold was 742 square feet. He said the commission may waive standards upon satisfaction of the following criteria:

- Strict compliance with the above slope protection standards renders the site undevelopable.
- Results in substantial economic hardship not created by the applicant or otherwise self-imposed, or the property owner purchased a lot of record within a platted and recognized subdivision, within an established residential zone.
- Results in a building location that requires excessive grading, vegetation removal, or driveway distances in conflict with the purposes of this Chapter.
- The development substantially conforms to all other development, site design, and environmental standards of this Chapter and in all other applicable ordinances and codes with the exception of the slope conditions.

Estudillo said the legislative intent of FCOZ also makes it clear that lots of record that existed prior to the adoption of FCOZ could be eligible for a slope waiver provided that strict compliance renders the lot undevelopable. He noted the applicant already received a variance to reduce the front yard setback to 20 feet, which staff supported on the basis that it reduced the impact of the house on the steep slopes of the lot. Accounting for the setbacks, staff believes that the buildable area is limited. Staff believes that a case can be made to the lot being undevelopable under strict application of the slope criteria, given the size and shape of the area that is under 30% slope, and the expectations of a typical modern home which can be built in any other single-family neighborhood in Millcreek. The authority to grant a slope waiver for private development is limited to slopes up to 40%. The applicant would need to seek a variance and demonstrate a hardship pursuant to state law to be eligible to build on slopes greater than 40%. Staff advised the applicant to seek a slope waiver to the extent permissible by FCOZ, and to follow up with a variance request.

Chair LaMar asked if the proposed home would need a variance. Estudillo said the 40% slope approval was the cap by the Planning Commission, anything more would require a variance. Lilly noted a variance would be required. Estudillo reviewed the exception criteria.

Staff completed a preliminary FCOZ review, and the following concerns should be addressed:

1. Applicant should consider additional efforts to stabilize the fencing such as anchors into the native soil may be needed. The applicant's proposal for sandbags to be used for stabilization for construction is insufficient.
2. Applicant should supply a more detailed slope stability plan for constructions.
3. Applicant is proposing cantilevered decks as part of their projects. Cantilevers should be pulled back to fall within the limits of disturbance recorded on the plat.

The geologist and a Millcreek engineer felt that these were acceptable solutions, depending on the specifics once those were received. As far as the cantilevered upper deck sticking out, staff has asked the applicant's structural engineer for an explanation as to how this will be done without disturbing any ground outside of the limit of disturbance - especially if the limit of disturbance fence is placed on that boundary line.

The Mt. Olympus Community Council, from their meeting on October 3, 2022, would support reasonable slope waiver requests after the applicant satisfies the following conditions:

- The lot appears to have a substantial amount of fill dirt. The MOCC only recommends granting any type of slope waiver after complete and accurate soils tests are completed that explicitly determine if the soils within the proposed limits of disturbance are native soils. Adequate pier structural supports should be investigated to ensure greater stability to bedrock subsurface levels. The lot appears to contain sizable amounts of fill dirt. There are clusters of construction debris throughout the slope of proposed disturbance, including concrete, asphalt chunks and similar construction debris. We speculate that the depth and sheer magnitude of fill material might have been underestimated. Please ensure that any defined limits of disturbance require appropriate engineered mitigation to guard against collapsible, non-native, or otherwise dangerous soils.
- The cantilevered decks should be pulled back towards the home within the limits of disturbance.
- This development request creates legitimate, sizable, and perpetual risk of landslides or other uncontrolled damage to property owners immediately downhill to this property. The MOCC requests that extensive risk mitigation tactics be required not only during construction but also as permanent infrastructure to ensure adjacent property owners are not put in perilous situations in the event of an earthquake, more frequent microbursts or acts of negligence by occupants of the home after its completion.
- The MOCC requests that the applicant and city staff meet with property owners immediately adjacent and downhill to this development request to inform them of the potential outcome of the applicant being granted a slope waiver. Effective and proactive communication will hopefully avoid unnecessary misunderstandings throughout this process. In conclusion, the MOCC grudgingly supports a slope waiver for this property, only because it has been determined to be a Lot of Record, coupled with applying strict enforcement of the FCOZ development protocols would deem the lot virtually unbuildable. We should refer to this lot within the Taylor Subdivision as a perfect example of why the FCOZ ordinance was adopted shortly after this subdivision was recorded. We don't endorse slope waivers very often, but in this context, we support granting one only after these conditions are satisfied. Otherwise, the character of our

neighborhoods and beautiful slopes will head downhill quickly, potentially even more rapidly than a boulder dislodged during construction of this property.

Staff recommended that the planning commission grant preliminary approval of the application, based on staff analysis and city goals, under the following conditions:

- Complete an extensive FCOZ review.
- The home will be built with the materials, massing, height, and windows exactly as presented in the staff report to protect the Foothills and Canyons.
- The cantilevered decks should be pulled back towards the home within the limits of disturbance.
- Drainage design should be re-designed to alleviate saturation of the slope.
- Extensive risk mitigation tactics be required not only during construction but also as permanent infrastructure to ensure adjacent property owners are not put in perilous situations in the event of an earthquake or landslide.
- Accurate soils tests should be completed to explicitly determine if the soils within the proposed limits of disturbance are native soils. Adequate pier structural supports should be investigated to ensure greater stability to bedrock subsurface levels.
- Applicant must also apply for a variance to the Land Use hearing Authority for consideration of a slope waiver over 40% - 50%.
- All other items in the staff report.

Commissioner Reid asked how staff knew the engineering standards were adequate for the site. Estudillo said a third-party geologist reviewed the site. Jen Smith said the code did not have engineering standards, but FCOZ did to an extent.

Mark Chandler, CRS Consulting Engineers, said there would be parts of the home that would be built on bedrock, but the entire foundation would need to be dug out to know more. Two separate geotechnical studies had been conducted on the site. The house could structurally be built in this area, but was rarely built in other areas. There were concerns about encroaching on the limits of disturbance. The purpose of the commission meeting was for the slope waiver, after which a variance, additional soils testing, and additional design considerations would be necessary. This site had less than 10 feet of fill, the majority of the lot was native fill. His biggest concern was a sure foundation on bedrock or native soil that had been properly prepared, and how to restabilize unstable slopes. He noted much of the site had a 50% slope. He did not make a recommendation.

Commissioner Reid wondered about structure support to bedrock. Chandler said the footing may need to be embedded in the bedrock instead of sitting on it. The geotechnical engineer could evaluate the benefit of embedding. Evaluation would need to be done on both options as far as seismic event conditions. Commissioner Hulsberg asked about shoring. Chandler said there would not be any if it would impose on the limits of disturbance. Commissioner Claerhout brought up core sampling and geotechnical potential with ground water infiltration with liquefaction and debris flow. Chandler said the geotechnical engineer did an amendment to the report that acknowledged groundwater infiltration and stability in saturation events. Commissioner Reid asked if adding modifications from the applicant should include evaluations on whether the structure should be located on or embedded into bedrock and to evaluate seismic events with each. Chandler said the evaluation had been done but not taken to the next level. The applicant needed to provide recommendations for one versus the other

for a seismic event. Smith said for slope stabilization, the engineer representing the applicant was proposing to use stabilization mats stapled down with long staples about 6 inches deep. Chandler found in the geotechnical report that bedrock was found at approximately 7 feet. The foundation would extend several feet into the bedrock. There was no concern with liquefaction because of the shallow nature of the loose material on the bedrock; slope stability not a concern.

Warren Lloyd, Lloyd Architects, said the July 27, 2021 geotechnical report prepared by AGECE Applied GeoTech covered debris flow in the geologic hazard evaluation. He read from the report on geologic hazards with debris flow, landslide, rockfall, surface fault rupture, liquefaction, and tectonic subsidence.

“The site is not located near a source for debris flow. Debris flow is not considered a hazard at the site. The site and vicinity generally slopes gently to moderately down toward the south. There is quartzite bedrock with some limestone beds underlying the site. The bedrock dips at about 60 degrees down to the northeast. Review of the geology map and landslide compilation maps for the area shows no landslides in the area... Landslide is not considered a hazard at the site. There is no source of rock on or near the property that would represent a rockfall hazard at the site. There are no active faults mapped as extending through the site and no evidence of fault features were found from aerial photograph and lidar review. The closest mapped trace of an active fault is that of the Wasatch fault zone located approximately 1.6 miles to the southwest of the site (Utah Geological Survey, 2021). The site is located in an area mapped as having a "very low" liquefaction potential (Salt Lake County, 2002). Based on the subsurface condition encountered at the site, liquefaction is not considered a hazard at the site. Seismically-induced settlement would be insignificant at the site since there are no faults close to the site.

Based on the subsurface conditions encountered and the proposed construction, the following recommendations are given:

1. Subgrade Preparation

Prior to placing site grading fill, the organic material, topsoil, unsuitable fill, debris and other deleterious materials should be removed from below the proposed building, slab and pavement areas.

2. Excavation

We anticipate that excavation in the fill and silty gravel at the site can be accomplished with heavy-duty excavation equipment. Excavation in the bedrock will likely require jack-hammering or other rock excavation methods. Additional difficulty should be expected in confined excavations, such as utility trenches. Care should be taken to minimize disturbance of the natural soil and bedrock that remains below the proposed building area.

3. Materials

Materials used as fill for the project are anticipated to consist of imported fill, the on-site soil and bedrock...”

Lloyd recognized that the preparation for construction on this difficult site needed to be systematic and exhaustive. The slope waiver from the commission would be the gateway to continue the design of the house.

Commissioner Claerhout appreciated Lloyd's explanation. Commissioner Reid asked where liability was if something went wrong. Lloyd said the architect was the prime consultant with their stamp of approval, but they relied on engineer expertise. Based on the assessment from the geotechnical engineer, attaching the house to the bedrock of the hill provided as safe a condition as they could create. The property owner would also rely on the engineer's expertise.

Won Shim, project architect, said the team had gone through many iterations of the plan for the challenging site.

Chair LaMar asked about all the approvals for this project. Lilly said any development in the FCOZ required a site plan approval by staff, but the planning commission granted the slope waiver, and the hearing officer granted the variance. He recommended that final approval of the geological risk mitigation shall be subject to the city engineer's approval. Chair LaMar asked about a safe excavation requirement. Smith said there was not code that covered it, but the excavation was mentioned in the geotechnical report. Estudillo recommended the commission provide conditions for any mitigation of detrimental effects. Commissioner Hulsberg asked what the intent of the degrees of slope waiver approvals were; 30% FCOZ, 30-40% planning commission, and 40+% land use officer. Lilly said the purpose of the FCOZ addresses aesthetics; encourages development that contours to the natural contours of the land and minimizes the scarring and erosion effects of cutting, filling and grading on hillsides, ridgelines, and steep slopes; balances private and commercial needs against the risk of destabilizing fragile soils, defacing steep slopes and degrading water quality; minimized disturbance to existing trees and vegetation; reduced flooding; and protects property rights and commercial interests, and encourages economic development. The framers of legislation tried to identify where the balance between public safety, aesthetics, and private property rights were. Almost every city had heightened scrutiny on slopes greater than 30% because of heightened risk on building on those slopes.

Rachelle Gebler, applicant, thanked the commission for their work. Her family planned to live in the home when they retired. They currently resided in New York.

Chair LaMar opened the public hearing.

Matt Haberman, 3815 Millcreek Canyon Road, expressed concern with the project with slope stability and debris. The slope is extremely steep. He felt the slope waiver was drastic and beyond the purpose of the FCOZ which was in place before the owners purchased the property. He was concerned about the proximity of the house to the limit of disturbance. He thought the house should be atypical to meet the lot characteristics.

Elyse Sullivan read an online submitted comment from Natalie Green, 3815 E. Millcreek Canyon Road. *"My husband and I live in a property located within 300 feet of this project location. We believe that the FCOZ should not be altered to support this-or any-development. FCOZ is put in place for a reason and this becomes a very slippery slope for approval of other variants in our protected areas. We are not in support of allowing this variant and believe the property limits of disturbance should be honored as drafted."*

Carlos Estudillo read emailed comments from Randy Kerr, 3717 S. Choke Cherry Drive, and Joan Fregly, 3712 & 3728 Choke Cherry Drive (see attached).

Chair LaMar closed the public hearing.

Commissioner Larsen said the restrictions imposed by FCOZ were reasonable. The only reason he would feel comfortable approving the waiver was because of the other protective measures along the approval process. Commissioner Reid noted the lot was not buildable under FCOZ and worried about the structure being safe. She wondered about the neighbors being protected if something went wrong. Commissioner Hulsberg asked if a contractor reviewed the means and methods of how to build on the site. Lloyd said the constructability of the house was under review with a general contractor. A builder would assume builder's risk during construction. The risk shifts to the homeowner once a certificate of occupancy is issued. The geotechnical engineer would also provide services that would constitute as special inspections, which would be warranted. Commissioner Hulsberg said the engineering and design would address the constructability of the project, but the concern was the "what ifs".

Lilly said the site was sensitive enough to require a land disturbance permit prior to a building permit being issued. The permit enables the city, applicant, and all parties to understand the process by which the land would be prepared for development and what would happen in contingencies. Those details were in Millcreek Code 17.22.040. He recommended the condition of obtaining the permit be added as a condition of application approval.

Commissioner Reid asked about liability if a rock fell into the neighbor's yard being the owner's responsibility. Brems said there would be a lot of fingers pointed and one would be at the city. Commissioner Reid asked about insurance the owner could get to protect against that. Brems did not know of any. Commissioner Claerhout asked about the slope of the buildable area. Lilly said in some areas it exceeded 50%. Chair LaMar wanted as much to be done as could be to make sure something bad did not happen. He wanted special inspections as needed to be prescribed by city staff. The limits of disturbance should not be touched during construction or thereafter. Commissioner Claerhout said the site would be risky to be built on, but if it was done with more care and the right plan, it could be done safely.

Commissioner Hulsberg asked if there was time for the applicant to address the commission's concern before it went to the land use hearing officer. Lilly said city staff would ask the land use hearing officer to consider the concerns of the commission and more analysis would be needed on land disturbance issues. Commissioner Reid asked if the geotechnical recommendations were included in the approval requirements. Lilly said the staff's model motion should include it, but he recommended the following additional conditions:

1. Applicant's consultant shall evaluate the benefit of embedding the footings into bedrock. Mitigation measures are subject to final approval by the City Engineer.
2. Applicant's consultant shall evaluate the conditions of bedrock during a seismic event. Mitigation measures are subject to final approval by the City Engineer.

3. Prior to issuing a staff site plan approval under the Foothills and Canyons Overlay Zone, risk mitigations proposed by the Applicant's consultant related to geologic hazards shall be subject to a final approval by the City Engineer.

Brems recommended on the staff model motion item, "Extensive risk mitigation tactics be required..." that who decided the tactics needed to be included, he recommended the city engineer.

Commissioner Reid moved to grant preliminary approval of FC-22-004 request for a slope waiver to build a single-family home located in the Foothills and Canyons Overlay zone on Choke Cherry Drive, with the conditions in the staff report as well as:

- 1. Applicant's consultant shall evaluate the benefit of embedding the footings into bedrock. Mitigation measures are subject to final approval by the City Engineer.**
- 2. Applicant's consultant shall evaluate the conditions of bedrock during a seismic event. Mitigation measures are subject to final approval by the City Engineer.**
- 3. Prior to issuing a staff site plan approval under the Foothills and Canyons Overlay Zone, risk mitigations proposed by the Applicant's consultant related to geologic hazards shall be subject to a final approval by the City Engineer.**
- 4. Applicant shall obtain a land disturbance permit pursuant to section 17.22.040 of the Millcreek Code prior to obtaining a staff site plan approval under the Foothills and Canyons Overlay Zone.**
- 5. Applicant shall obtain special inspections as needed and prescribed by staff.**
- 6. Neither the actual structure nor the construction of the structure shall encroach into the limits of disturbance.**

Commissioner Hulsberg seconded.

Commissioner Reid asked in the motion the commission could say that the applicant would be responsible for any damages incurred during construction. Brems said she could say it, but it would not hold in court.

Chair LaMar called for the vote. Chair LaMar voted yes, Commissioner Reid voted yes, Commissioner Claerhout voted yes, Commissioner Hulsberg voted yes, and Commissioner Larsen voted no. The motion passed.

The commission took a break from 7:30-7:43pm.

1.3 Consideration of CU-22-016, Request for a Conditional Use Permit for a 150-Unit Affordable Housing Project Location: 4101 S. Howick Street Applicant: CDCU Planner: Robert May

Robert May said the commission previously saw the application as a rezone in May 2022. He reviewed the commission's motion for the rezone, which was a recommendation of approval with the development agreement conditions recommended by staff, including a condition to work with staff on a potential future crosswalk as part of that development agreement. He showed exhibit B of the development agreement which included conditions of approval. He then showed the commission renderings of the proposed building, highlighting the drop off zone facing Howick Street. There had been minor changes since the rezone application. The amenity deck was opened up and the building height was reduced. The development agreement required a minimum of 180 parking stalls, though the applicant was proposing 187. The proposal included 150 units of affordable housing for families (up to 60% AMI) and 11 of the units would be considered deeply affordable units targeted at or below 30%

AMI. He showed a rendering of the future Central Avenue with proposed developments and the half width cross section for Central Avenue and Howick Street. The site was in between the Meadowbrook and Murray North TRAX stations. He highlighted three findings from the staff report:

1. Will help Millcreek continue to grow and support the Meadowbrook/Main Street Urban Center.
2. Provides much needed affordable housing units and helps Millcreek meet its obligation to provide diverse and affordable housing options by targeting populations making up to 60% AMI with some units being deeply affordable at 30% AMI.
3. Meets the criteria for being a transit-oriented development (TOD) as it is in close proximity to transit and being within walking distance to and from the UTA Meadowbrook Station and the Murray North TRAX Station.

Staff recommended that the commission grant preliminary conditional use approval of the application.

Commissioner Hulsberg asked if the street parking was included in the 180 stall count. May confirmed.

Todd Reeder, CDCU, said through the low-income tax credit process, with the cost of construction, and getting the preliminary plan through the rezone process, they revised the plan. The podium parking was reduced, but the floor heights would remain the same.

Chip Spencer, Millcreek Community Council, said the council recommended approval. They wondered about the total number of parking stalls being reduced and hoped as many stalls as possible over 180 would be provided.

Chair LaMar opened the public hearing.

Chair LaMar read an email from John Tronier. "...I work for a business adjacent to this project. From what we have seen of the plans it appears that the onsite parking does not include enough spaces for all of the residents to park in. This will create a hardship for all of the businesses in the area. Residents and their visitors will need to park somewhere, and that will be up and down the street and in business parking. For those of us who work for businesses in the area, it would appear that the intention of Millcreek City is to push existing job creators out of the area."

Lilly read an email from Duff Ellsworth. "I own 3 buildings adjacent to the new development. I am very concerned with the traffic and the one way bridge. This needs to be addressed and a solution figured out now before these three developments come on line. I am also conch with parking. There is very limited parking now and I can not see on the proposed plans there will be adequate parking for that large of apartments."

Chair LaMar closed the public hearing.

Chair LaMar asked about the parking stall count. May said the goal was a 1.25 per unit ratio, which amounted to 187 stalls. Commissioner Hulsberg asked about the parking stall count compared to the number of bedroom units. Reeder said there would be no roommates in the affordable family units and the housing was near transit. They were comfortable with the

traffic study conclusion of 157 stalls. Chair LaMar asked about not charging for parking stalls. Lilly said they could not charge for any parking per the development agreement. Chair LaMar said there was a mechanism for spill over neighborhood parking. May expressed confidence there would not be any spill over parking issues.

Chair LaMar, regarding CU-22-016, moved to approve the preliminary conditional use permit for the 150-unit affordable housing project at 4101 South Howick Street with all the conditions listed in the staff report. Commissioner Larsen seconded. Chair LaMar called for the vote. Chair LaMar voted yes, Commissioner Reid voted yes, Commissioner Claerhout voted yes, Commissioner Hulsberg voted yes, and Commissioner Larsen voted yes. The motion passed unanimously.

2. Commission Business

2.1 Approval of September 21, 2022 Regular Meeting Minutes

Chair LaMar moved to accept the minutes as presented in the staff report. Commissioner Hulsberg seconded. Chair LaMar called for the vote. Chair LaMar voted yes, Commissioner Reid voted yes, Commissioner Claerhout voted yes, Commissioner Hulsberg voted yes, and Commissioner Larsen voted yes. The motion passed unanimously.

2.2 Updates from the Planning and Zoning Director

Francis Lilly wished Jen Smith a hardy farewell as she was leaving employment with Millcreek.

2.3 Staff Update on Local Link / 3300 S. Studies

Lilly said there would be amendments to the General Plan in the commission's November meeting with adoption of the Local Link Study and the 3300 S. Corridor Study. State law required the city to adopt these studies as part of the General Plan if they were to be enforceable for dedication of public roadways. Fred Lutze gave a preview of these items. He said the Local Link Study looked at transit options on 1300 E. and Highland Drive from Sugar House to Holladay. The recommendation was an enhanced bus route. He showed a breakdown of options between streetcar, light rail, bus rapid transit (BRT), and enhanced bus. Chair LaMar asked about the difference between BRT and enhanced bus. Lutze said BRT included widening of the right-of-way whereas enhanced bus used the road's shoulders. The 3300 S. Corridor Study looked at completing the street in terms of creating walkable areas, safer lanes, and a multiuse pathway for bicycles out of the roadway. The study established what that looked like through Millcreek with renderings and recommended cross-sections. The study was conducted by UDOT with participation from Millcreek and South Salt Lake. The study was broken into sections; I-15 to State Street and State Street to 2700 E. Lilly noted the cross-section in front of Millcreek Common was planned through a development agreement.

3. Calendar of Upcoming Meetings

- City Council Mtg., 10/24/22, 7:00 p.m.
- Planning Commission Mtg. 10/26/22, 5:00 p.m.
- Planning Commission & City Council Special Mtg. 10/26/22, 6:30 p.m.

ADJOURNED: Commissioner Larsen moved to adjourn the meeting at 8:26 p.m. Commissioner Reid seconded. Chair LaMar called for the vote. Chair LaMar voted yes, Commissioner Reid voted yes, Commissioner Claerhout voted yes, Commissioner Hulsberg voted yes, and Commissioner Larsen voted yes. The motion passed unanimously.

APPROVED: Shawn LaMar Date 11/16/2022
Shawn LaMar, Chair

Attest: Elyse Sullivan
Elyse Sullivan, City Recorder

Carlos Estudillo

From: Randy Kerr <[REDACTED]>
Sent: Friday, October 14, 2022 6:55 PM
To: Carlos Estudillo
Subject: 3733 S. Choke Cherry Slope Waiver

Carlos,

I'm writing you to voice my concerns and to go on record, regarding the requested (Slope Waiver in the FCOZ).

I will not be able to attend or watch the meeting via live stream, I will be on an airplane at that time.

As I hope you are aware, the rest of the residence on Choke Cherry Dr. had to follow the strict rules of the FCOZ/Urban Interphase, and built within its limits, even though it caused us quite a bit of additional hardship and expense.

A couple of the residents, did apply for a variance from a 30' set back to a 20', and were granted.

I feel for the Gebler Family. They seem to be really nice people and have probably spent quite a bit of money and time, to build a new home.

But I also feel they should've done their due diligence, before purchasing the lot.
That way, they would know, if what they wanted to build would be allowed by law.

There's a reason why the plat map shows the buildable area of each lot on Choke Cherry.

Best,

Randy Kerr
3717 S. Choke Cherry

Carlos Estudillo

From: Joan Fregly <[REDACTED]>
Sent: Monday, October 17, 2022 9:23 AM
To: Brad Sanderson
Cc: Carlos Estudillo
Subject: variance request by applicant for 3733 South Choke Cherry Drive

Good morning,

I'm contacting you this morning concerning the application for a variance for 3733 South Choke Cherry Drive. I am the owner of 3712 and 3728 Choke Cherry Drive.

I'm going to list some concerns that brought me to the conclusion for my decision to oppose the request for the variance requested by the applicant and their architect and engineers.

1. Proper due diligence at the time of the purchase of the property should have alerted the owners of the challenges to build on 3733 South Choke Cherry Drive.
2. One year ago, the owners were seeking a set back variance for their permit and they were granted the variance. One year later they are seeking a variance for building on a hillside zone, created by Salt Lake County in the 1990's and that hillside zone, (sorry, I'm not sure of the proper name of the hillside zone ordinance), which is a platted and recorded document is the current standard for all development within that zone.
3. I inquired recently with Mr. Estudillo about this request and told him I opposed the request, and his response to me was, "Why would you opposed it?" My response was that his statement troubled me because it seemed that a decision was already being made to grant the variance. Upon further questioning, Mr. Estudillo stated that a "mistake" was made by Salt Lake County in the 1990's and they were trying to work with the applicant to correct this. I asked for and was denied by Mr. Estudillo for documentation from Millcreek City or Salt Lake County for the written documentation of the "mistake."
4. How can you change a recorded document by Salt Lake County and how many other "mistakes" were made by Salt Lake County when they surveyed and platted the entire Hillside Overlay Zone?
5. Who has the right to right to approve a Hillside Zone variance, Millcreek City or Salt Lake County?
6. Mr. John Lockknob contacted me through my Ring Doorbell and then by a later phone conversation regarding the request for the variance. Upon talking with him, he noted that he had come on to the subject property for inspection and also did other due diligence on the lot request and knows about the "mistake" by Salt Lake County. He also discovered that the lot has been altered by added fill dirt from when the original plat was done. All of this has to be taken into consideration when everyone makes their decision to grant or deny the request.

I still have reservations on how this whole request has been handled. You all contacted me by mail about the request. No information was ever given to the neighbors about the "mistake" by Salt Lake County.

I have been denied the information by Millcreek City to see and determine if in fact there is a "mistake." The applicant and their hired professionals have had plenty of time to research the Hillside Overlay Zone.

A discovery this late in the process by the owner and their hired professionals is shocking and I'm sure they are upset by the discovery. That late discovery and their request for a variance does not exclude the fact that a recorded Hillside Overlay document by Salt Lake County has been in existence since the 1990's and sets the standards. Anyone trying to develop within the zone knows the requirements of the process to develop within the zone. How can it be changed by Millcreek City?

I would still like to get documentation on the "mistake." I will not be in Salt Lake City on October 19th for the hearing. I am currently in Florida and will not be able to attend. Is there viewing available via internet for the hearing?

Thank you,

Joan Fregly



 (this is now a cell/mobile number)

You may voice call or text to the above cell number