

1 The second is that the erection of such a fence or wall is the most reasonable solution under the
2 circumstances. The rationale presented by the applicant was provided. He explained that privacy
3 alone is used as the rationale in most, if not all, applications. Staff recommended approval with
4 conditions set forth in the Staff report. Because the fence has already been constructed, staff
5 recommended that the Building Permit be submitted within 30 days.

6
7 Commissioner Steinman asked about the construction of a structure as referenced in the public
8 comments. Mr. Johnson confirmed that there is an existing concrete pad that is being utilized as a
9 dog run.

10
11 **Project ZTA-22-003 - A Public Hearing and Possible Action on a City-Initiated**
12 **Ordinance Amendment Related to the Commercial Use Requirements in the Mixed**
13 **Use (“MU”) Zone.**
14

15 Mr. Johnson presented the Staff Report and stated that the above matter is a City-initiated
16 amendment to the Mixed-Use Ordinance. The City Council directed Staff to provide an
17 implementation of the vertical mixed-use required in the Mixed-Use Zone. Specifically, ground-
18 floor retail in mixed-use projects should be stricter than in the current City Code. The General
19 Plan that is in progress includes a complete overhaul of the Mixed-Use Ordinance to a more form-
20 based concept. He explained that what is proposed will serve as an interim amendment until the
21 General Plan process is complete. The current zoning was reviewed. Mr. Johnson reported that
22 what is being recommended does not necessarily dissuade future applications but will impact
23 residential products.

24
25 The proposed language will state that commercial uses are required for all development and
26 redevelopment projects that are approved under this section. Commercial or retail uses shall
27 occupy a minimum of seventy percent (70%) of the width of the ground floor of buildings along
28 the project’s street frontage with a minimum depth of forty feet (40’). For projects that include
29 multiple parcels, calculations shall be based on the total project frontage.

30
31 Live/work units may be used to meet the requirement for commercial uses under this Section,
32 subject to the following requirements:
33

- 34 • The live/work unit must provide direct access to the primary street frontage and/or public
35 parking areas;
 - 36 • Excluding private garage space, the entire ground floor of the live/work unit must be
37 designed, constructed, and used as commercial space;
 - 38 • Commercial spaces within the live/work unit that are used to satisfy the minimum
39 commercial frontage requirements of this chapter may not be used for residential parking
40 or storage;
 - 41 • The live/work unit’s first story must be a minimum of twelve feet (12’) in height, measured
42 from the finished floor elevation; and
 - 43 • Parking provided for the live/work unit must meet both the residential and commercial
44 requirements of this chapter.
- 45

1 Ways to incentivize developers to increase the ground floor percentage were discussed. Mr.
2 Johnson explained that a height increase can be requested with the Planning Commission as a
3 Conditional Use where an increased commercial use is proposed. Density in mixed-use areas is
4 35 units per acre and tools are provided to allow for additional height and density. The Planned
5 Development District (“PDD”) is for larger redevelopment pieces. The various options were
6 described.

7
8 Commissioner Anderson raised a question about the businesses along Fort Union Boulevard
9 requiring adequate public parking for retail and residential uses. Mr. Johnson confirmed that a
10 requirement was imposed for additional spaces but there is no mandate in the Ordinance that
11 requires live/work units to be used as commercial. A third story is allowed with any building in
12 the Mixed-Use zone. He recommended a more restrictive provision that allows a third story only
13 if the building has on-street frontage and is vertical mixed-use.

14
15 Commissioner Mills stated that there was discussion regarding the Fort Union Boulevard area
16 having a main street feel that will be walkable with buildings that are accessible from the main
17 street. He stated that the reality is that neither of the proposed projects will produce a single unit
18 as originally planned. Mr. Johnson clarified that the 70% commercial requirement is for buildings
19 with project street frontage.

20
21 Commissioner Steinman expressed concern with affordability and potentially vacant commercial
22 space. He suggested that an affordability application be required where either 70% of the width
23 of the ground level or 30% of units are at 50% AMI. Options for mitigating potential dead space
24 were discussed.

25
26 Commissioner Mills stated that workshopping would be beneficial when considering the main
27 street feel. He looked forward to continuing to address issues going forward.

28
29 Commissioner Ebbeler stated that shared parking, pedestrian orientation, and connectivity should
30 be a focus. Incentives for developers were considered. Commissioner Steinman felt there should
31 be parallels based on the size of the development. He felt there was a need to create affordability
32 and an ecosystem in order for residents to utilize the retail spaces.

33
34 Mr. Johnson was confident with the input received and had a strong understanding of the
35 Commission’s direction. Staff would take the direction given and return with various options for
36 consideration.

37
38 **2.0 Additional Discussion Items.**

39
40 **3.0 Adjournment.**

41
42 ***Commissioner Ebbeler moved to adjourn. Commissioner Chappell seconded the motion. The***
43 ***motion passed with the unanimous consent of the Commission.***

44
45 The Work Meeting adjourned at 5:57 p.m.

1 **MINUTES OF THE COTTONWOOD HEIGHTS CITY**
2 **PLANNING COMMISSION BUSINESS MEETING**

3
4 **Wednesday, October 5, 2022**

5 **6:00 p.m.**

6 **2277 East Bengal Boulevard**
7 **Council Chambers**
8

9 **ATTENDANCE**

10
11 **Members Present:** Commissioner Dan Mills-Acting Chair, Commissioner Lucy Anderson,
12 Commissioner Jessica Chappell, Commissioner Sean Steinman,
13 Commissioner Jonathan Ebbeler
14

15 **Staff Present:** Community and Economic Development Director Michael Johnson, Senior
16 City Planner Samantha DeSeelhorst, Deputy City Recorder Heather
17 Sundquist, Systems Administrator Alex Earl, City Attorney Shane Topham
18

19 **BUSINESS MEETING**
20

21 **1.0 Welcome and Acknowledgments.**
22

23 In the absence of Chair Jesse Allen, Commissioner Dan Mills called the Business Meeting to order
24 at 6:00 p.m. and welcomed those present.
25

26 **1.1 Ex Parte Communications or Conflicts of Interest to Disclose.**
27

28 There were no conflicts of interest disclosed.
29

30 **2.0 General Public Comment.**
31

32 There was no public comment.
33

34 **3.0 Business Items.**
35

36 **3.1 Project CUP-22-011 – A Public Hearing and Possible Action on a Request by**
37 **Katherine Pasker, on Behalf of Robert Bryne, for a Wall Height Extension to**
38 **Construct an Eight-Foot Wall Along the North Property Line at 7275 South**
39 **Caladora Cove.**
40

41 Community and Economic Development Director, Michael Johnson presented the Staff Report
42 and stated that the above matter involves a request for a wall height extension to construct an eight-
43 foot wall along the north property line at 7275 South Caladora Cove. Due to previous enforcement
44 and appeal measures, the City is required to accept the application retroactively and process it as
45 they would a new application. Staff measured the entire constructed fence and determined that it
46 does not exceed eight feet at any point. A portion of the fence is fully compliant with City Code

1 but where the property slopes and the fence exceeds six feet, Conditional Use approval is required.
2 Renderings of the site were presented. He reported that the request requires a Conditional Use
3 Permit and a Building Permit but no neighbor consent.
4

5 Mr. Johnson reviewed the measurements of the fence and stated that there are two required criteria
6 for wall height extensions. The first is the existence of unique or special circumstances of an
7 adverse nature relating to the property that will be substantially minimized or eliminated by the
8 increased height of the requested fence. The second is that the erection of such a fence is the most
9 reasonable solution under the circumstances. He reported that there have been 15 applications for
10 wall height extensions since 2019, all of which have been approved. Privacy was used as a valid
11 rationale. Staff recommended public comment be allowed tonight with deliberation and a decision
12 to be made at the next Planning Commission Meeting. He recommended approval with conditions
13 set forth in the Staff Report.
14

15 Commissioner Chappell asked if there is a precedent or penalty for building without a permit.
16 Mr. Johnson stated that it is generally a Code Enforcement action where a Notice of Violation is
17 issued and the citation process initiated. If the situation persists, the matter could end up in court.
18 One of the appeals was that there was an open violation for a fence exceeding six feet in height
19 having been constructed without approval. Initially, Staff refused to accept the Conditional Use
20 application. The decision was appealed and the City's Appeals Hearing Officer determined that
21 the application must be accepted. In the end, the City did not have the authority to refuse to hear
22 the request.
23

24 Senior City Planner, Samantha DeSeelhorst, explained that on a case-by-case basis, the Code
25 Enforcement Department will sometimes use financial citations but depends on the situation. She
26 considered the citation process to be a helpful tool to discourage construction prior to submitting
27 an application.
28

29 Commissioner Steinman shared Commissioner Chappell's concern with moving ahead and asking
30 for forgiveness later. He recognized that it is not a penal situation and the Commission is tasked
31 with applying rules fairly without being arbitrary and capricious. In this case, the applicant knows
32 the process, rescinded the application, and proceeded anyway. Mr. Johnson reminded the
33 Commission that their purview is as the Land Use Authority.
34

35 Katherine Pasker identified herself as the legal counsel for the applicants, Robert and Ashley
36 Burns. Their comments have been submitted and provide additional context on the situation. They
37 appreciated the Commission's frustration but believed there was a basis in the Code and confusion
38 regarding how to measure the fence height. Structures are based on an average height, which was
39 what Mr. Burns understood would be acceptable. After speaking with her clients and City Council,
40 the applicants voluntarily initiated the filing of a new application. She noted that the point of City
41 Enforcement is to encourage compliance. In this case, the applicant tried to come into compliance
42 on their own.
43

44 Commissioner Ebbeler stated that he read the neighbors' comments and empathized greatly with
45 their concerns. The frustration pertained to an issue with a barking dog. He considered this to be
46 a Code issue and not necessarily open for Commission consideration.

1
2 Commissioner Mills opened the public hearing.
3

4 *Kyle Fielding* identified himself as an attorney representing the neighbors, Mr. and Mrs. Yaganti
5 who submitted written comments that were accompanied by a letter from Mr. Fielding's office.
6 The letter explained that technically, this is a building structure and not a fence. They disagreed
7 with Staff's interpretation. He understood that Ms. Pasker indicated that her clients consider it to
8 be a structure and not a fence. Mr. Yaganti and his wife want to be good neighbors but are
9 negatively impacted by the dog run. There is a bedroom window adjacent to the dog run and the
10 noise level has increased significantly despite the application suggesting that the additional height
11 will mitigate the noise. The fence also encloses and has a tunneling effect on the Yaganti's
12 driveway since it is only two feet from the property line. Mr. Fielding emphasized that the
13 applicant recently began storing his garbage cans in the two-foot space between the wall and the
14 Yaganti's driveway.
15

16 Mr. Fielding reported that the application does not meet the very high burden of proof that is
17 required and is clear and convincing evidence. One of the requirements, as noted by Staff, is that
18 there are unique or special circumstances on the property that is solved by the placement of the
19 fence. Staff referenced privacy being used as justification, which is not unique or special. He
20 stated that the application is ultimately a request for a dog run. The homeowner chose the
21 placement. This is a conscious decision and not a natural circumstance. He commented that
22 placing it next to the neighbor's bedroom window is not the most reasonable solution. He believed
23 there is ample space to place the dog run away from the neighbors and stated that privacy is in
24 question when the wall only runs a small perimeter of the entire property boundary. Mr. Yaganti
25 and his wife respectfully objected to the Conditional Use Permit being issued as they are negatively
26 impacted. They preferred to see the structure torn down since it was built without permission and
27 in violation of City Code. Mr. Fielding confirmed that if a Conditional Use Permit is issued, they
28 will likely challenge it.
29

30 There were no further public comments. Commissioner Mills suggested the public hearing remain
31 open to allow for additional comment.
32

33 *Commissioner Ebbeler moved to CONTINUE the Public Hearing for Project CUP-22-011 to*
34 *the October 19, 2022, Planning Commission Meeting. Commissioner Chappell seconded the*
35 *motion. Vote on motion: Commissioner Ebbeler-Aye, Commissioner Anderson-Aye,*
36 *Commissioner Steinman-Aye, Commissioner Chappell-Aye, Commissioner Mills-Aye.*
37

38 3.2 **Project ZTA-22-003 - A Public Hearing and Possible Action on a City-Initiated**
39 **Ordinance Amendment Related to the Commercial Use Requirements in the**
40 **Mixed Use ("MU") Zone.**
41

42 Mr. Johnson presented the Staff Report and stated that the above matter involves a public hearing
43 and possible action on a City-initiated Ordinance Amendment related to the Mixed-Use Code
44 requiring ground-level commercial. The desire is to avoid mixed-use projects that are
45 predominantly residential at ground level. The update to the General Plan will include a new

1 Mixed-Use Development Ordinance. The text amendment will function as a temporary measure
2 until that time.

3
4 The Mixed-Use Ordinance defines a mixed-use building as a single building that contains more
5 than one type of land use or development with more than one building. Mr. Johnson reported that
6 what is being proposed are requirements that would mandate commercial uses be developed in any
7 mixed-use project and occupy at least 70% of the width of the ground floor of buildings along
8 project street frontage along with a depth of 40 feet. Additional language clarified what live/work
9 units must include. He noted that what is proposed is an effort to mandate ground floor commercial
10 without mandating vertical mixed-use in every case and ensuring that the ground level of mixed-
11 use projects remains commercial.

12
13 Commissioner Mills opened the public hearing. There were no public comments. The public
14 hearing was closed.

15
16 *Commissioner Anderson moved to CONTINUE the Public Hearing for Project CUP-22-003 to*
17 *the November 2, 2022, Planning Commission Meeting. Commissioner Chappell seconded the*
18 *motion. Vote on motion: Commissioner Ebbeler-Aye, Commissioner Anderson-Aye,*
19 *Commissioner Steinman-Aye, Commissioner Chappell-Aye, Commissioner Mills-Aye.*

20
21 **4.0 Consent Agenda.**

22
23 **4.1 Approval of Planning Commission Minutes from September 7, 2022.**

24
25 *Commissioner Ebbeler moved to APPROVE the Planning Commission Minutes of*
26 *September 7, 2022. Commissioner Anderson seconded the motion. The motion passed with the*
27 *unanimous consent of the Planning Commission.*

28
29 **5.0 Adjournment.**

30
31 *Commissioner Chappell moved to ADJOURN. Commissioner Anderson seconded the motion.*
32 *The motion passed with the unanimous consent of the Commission.*

33
34 The Planning Commission Meeting adjourned at 6:33 p.m.

1 *I hereby certify that the foregoing represents a true, accurate, and complete record of the*
2 *Cottonwood Heights City Planning Commission Meeting held Wednesday, October 5, 2022.*
3

4 Teri Forbes

5 Teri Forbes

6 T Forbes Group

7 Minutes Secretary

8

9 Minutes Approved: December 7, 2022