

MILLCREEK CITY LAND USE

**APPEAL OF A PLANNING
COMMISSION DENIAL
OF APPLICATION RC-22-003
FOR AN “OPTION C SPECIAL
EXCEPTION” FOR PROPERTY
LOCATED AT 3682 CRAIG CIRCLE
IN MILLCREEK CITY**

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**PARTIAL DECISION AND
REQUEST TO
SUPPLEMENT THE
RECORD**

FILE # RA-22-001

Hearing Officer
J. Richard Catten

This appeal was heard by the Millcreek City Land Use Hearing Officer on February 1, 2022. The Appellant appeals the denial of a request for an “Option C” Special Exception to the Millcreek City Code (the “Millcreek Code”) requirements regarding front yard setbacks. The request for a special exception was made pursuant to §19.71.050 (A)(3) of the Millcreek Code and was denied by the Millcreek Planning Commission on November 3, 2022.

The Applicant was present at the hearing and was represented by Wade R. Budge of Snell and Wilmer. Millcreek City (the “City”) was represented by City Attorney John Brems. The Hearing Officer, being fully advised in the premises and based on the record, the arguments presented at the hearing, and the relevant ordinances, statutes and caselaw, now finds that the Planning Commission did not err on issues related to statutory interpretation and the process for review of the application as set forth in the Millcreek Code. With respect to the whether the decision of the Millcreek Planning Commission (the “Planning Commission”) is supported by substantial evidence, the decision on that issue is stayed and the Planning Commission is requested to supplement the record on appeal by

providing detailed findings and conclusions that disclose the steps by which the Planning Commission reached its ultimate factual conclusions. The findings and reasons for the partial decision and request to supplement the record are as follows:

FINDINGS OF FACT

1. The property (the “Property”) which is central to this appeal is located at 3682 Craig Circle in Millcreek, Utah and is zoned R-1-8. The Property is Lot 1 in the Boyd Circle Subdivision, a 4-lot subdivision plat which was recorded on March 21, 2022. which is a recently platted subdivision. (Planning Commission Staff Report dated October 26, 2022 (the “Staff Report”).

2. The Applicant supplied additional evidentiary information with this appeal. That information is outside the scope of the appeal and will be disregarded in accordance with §19.92.040(C) Millcreek Code.

3. The record below, which has been provided on this appeal, consists of the minutes of the of the October 26, 2022 Special Meeting of the Millcreek Planning Commission in which the Applicant’s application was denied, the Planning Commission Staff Report which was prepared by City staff, and a letter and other materials from the Applicant’s architect which assert that the Option C criteria has been met.

8 The Planning Commission failed to provide specific, detailed, findings of fact and conclusions that explain the basis for its decision.

APPLICABLE LAW

1. The Millcreek Code sets forth the scope of review as “The appeal authority shall determine the correctness of a decision of the land use authority in its interpretation

and application of its land use ordinances, based solely on the record (factual matters shall not be reviewed de novo)". §19.92.040(C) Millcreek City Code.

3. The Millcreek Code specifies that the burden of proof in this appeal is on the Applicant. §19.71.040(C). Pursuant to Utah Code §10-9a-707(3), an appeal authority may only conduct a de novo review if the municipality has failed to provide a scope of review.

4. Applicable provisions of the Millcreek Code Residential Compatibility Overlay Zone:

19.71.010 Purpose Of Provisions

A. The general purpose of the residential compatibility overlay zone ("RCOZ") is 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.

B. Recognizing the wide variation of circumstances incident to a residential application and the need for architectural freedom, the City is adopting a three-tiered approach:

1. Option A provides for strict standards of height, area, and setback with permits issued by the City (the "division").

2. Option B allows the City to consider deviations from one or more of the standards provided in Option A based upon the compatibility of the proposed residential application with other houses in the immediate neighborhood.

3. Option C allows a planning commission to consider at a public hearing a special exception for unusual or extraordinary circumstances that justify deviations from one or more of the limitations under Options A and B.

19.71.050 Option C Special Exception; Planning Commission

Review

A. An applicant whose proposed residential structure meets neither the requirements of Option A nor of Option B may seek extraordinary relief and exceptions to the limitations of MKZ

19.71.030.B.5, B.6, or B.7 or MKZ 19.71.040.D.1, D.2, D.3 or D.4 by submitting an original and seven copies of an application to the applicable planning commission setting forth in detail:

1. The specific provisions from which the applicant seeks exceptions and the requested relief;

2. Detailed information and explanation establishing that:

- a. 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.

- b. 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.

- c. 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.

- d. 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).

- e. The front yard setback will be at least eighteen feet.

3. Additional factors that the planning commission may consider in deciding whether to grant an exception under this Part include:

- a. Unusual lot shape;
 - b. Unusual or difficult terrain;
 - c. Drainage problems;
 - d. Situations that appear not to be clearly addressed by the provisions of Options A or B.

4. An application for an exception under this Option C will be subject to a public evidentiary hearing before the planning commission, for which notice of no less than ten days prior to the hearing will be given to:

a. All property owners appearing on the latest plat in the Salt Lake County recorder's office who own property within three hundred feet of the boundary of the subject lot; and

c. The chair of the community council for the area in which the subject lot is located.

B. A decision on the application shall be based on the evidence presented at the hearing. The burden of proof shall rest with the applicant. The planning commission may impose such conditions and limitations upon the approval of an exception to the requirements of this chapter necessary to prevent or mitigate adverse effects on other properties in the neighborhood of the subject properties, consistent with the standards of this chapter.

4. Pertinent sections of the Municipal Land Use, Development and Management Act ("LUDMA") found in Title 10, Chapter 9A, Utah Code Annotated.

10-9a-102 . Purposes -- General land use authority.

(2) To accomplish the purposes of this chapter, a municipality may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that the municipality considers necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing:

(d) structures;

(e) buildings;

(o) considerations of surrounding land uses to balance the foregoing purposes with a landowner's private property interests and associated statutory and constitutional protections.

10-9a-104. Municipal standards.

(1) This chapter does not prohibit a municipality from adopting the municipality's own land use standards.

(2) Notwithstanding Subsection [\(1\)](#), a municipality may not impose a requirement, regulation, condition, or standard that conflicts with a provision of this chapter, other state law, or federal law.

10-9a-501. Enactment of land use regulation, land use decision, or development agreement.

- (1) Only a legislative body, as the body authorized to weigh policy considerations, may enact a land use regulation.
- (2) (a) Except as provided in Subsection [\(2\)\(b\)](#), a legislative body may enact a land use regulation only by ordinance.
(b) A legislative body may, by ordinance or resolution, enact a land use regulation that imposes a fee.
- (3) A legislative body shall ensure that a land use regulation is consistent with the purposes set forth in this chapter.
- (4) (a) A legislative body shall adopt a land use regulation to:
 - (i) create or amend a zoning district under Subsection [10-9a-503\(1\)\(a\)](#); and
 - (ii) designate general uses allowed in each zoning district.(b) A land use authority may establish or modify other restrictions or requirements other than those described in Subsection [\(4\)\(a\)](#), including the configuration or modification of uses or density, through a land use decision that applies criteria or policy elements that a land use regulation establishes or describes.

10-9a-509. Applicant's entitlement to land use application approval -- Municipality's requirements and limitations -- Vesting upon submission of development plan and schedule.

- (1) (a) (i) An applicant who has submitted a complete land use application as described in Subsection [\(1\)\(c\)](#), including the payment of all application fees, is entitled to substantive review of the application under the land use regulations:
 - (A) in effect on the date that the application is complete; and
 - (B) applicable to the application or to the information shown on the application.(ii) An applicant is entitled to approval of a land use application if the application conforms to the requirements of the applicable land use regulations, land use decisions, and development standards in effect

when the applicant submits a complete application and pays application fees, unless:

- (A) the land use authority, on the record, formally finds that a compelling, countervailing public interest would be jeopardized by approving the application and specifies the compelling, countervailing public interest in writing; or
- (B) in the manner provided by local ordinance and before the applicant submits the application, the municipality formally initiates proceedings to amend the municipality's land use regulations in a manner that would prohibit approval of the application as submitted.

(c) A land use application is considered submitted and complete when the applicant provides the application in a form that complies with the requirements of applicable ordinances and pays all applicable fees.

10-9a-705. Burden of proof.

The appellant has the burden of proving that the land use authority erred.

10-9a-707. Scope of review of factual matters on appeal -- Appeal authority requirements.

- (1) A municipality may, by ordinance, designate the scope of review of factual matters for appeals of land use authority decisions.
- (2) If the municipality fails to designate a scope of review of factual matters, the appeal authority shall review the matter de novo, without deference to the land use authority's determination of factual matters.
- (3) If the scope of review of factual matters is on the record, the appeal authority shall determine whether the record on appeal includes substantial evidence for each essential finding of fact.
- (4) The appeal authority shall:
 - (a) determine the correctness of the land use authority's interpretation and application of the plain meaning of the land use regulations; and
 - (b) interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.
- (5) (a) An appeal authority's land use decision is a quasi-judicial act.

ANALYSIS

The Applicant in this case applied for a special exception from the front yard setback requirements of the Millcreek Code. The application was denied by the Planning Commission. This timely appeal followed.

The scope of this appeal is governed by §19.92.040(C) Millcreek Code, which restricts the review solely to the record below and prohibits de novo review of the facts. The City's determination of the scope of review is in accordance with its authority as set forth in §10-9a-707 Utah Code Annotated. The record in this case consists of the materials contained in the Planning Commission Staff Report (which includes the materials submitted to the City by the Applicant prior to the October 26, 2022 Planning Commission hearing) and the minutes of the Planning Commission meeting at which a public hearing was held, evidence was provided by the Applicant and the City, and the application was unanimously denied. The Applicant has the burden of proving that the land use authority, in this case the Planning Commission erred. §10-9-705 Utah Code Annotated.

The Applicant requested a Special Exception, rather than a Variance, to the applicable front yard setback ordinance in order to accommodate a home he plans to build on the Property. The request for a Special Exception is subject to certain criteria set forth in the Millcreek Code and the Planning Commission is the land use authority that, following an evidentiary hearing, determines if the Applicant's Property meets the criteria. The burden of proof that the criteria has been met is on the Applicant. In this case the Planning Commission determined that the Property did not meet the criteria and voted unanimously to deny the application. A written denial was issued by the Planning Commission on November 3, 2022.

The Applicant believes that the Planning Commission erred and has asserted essentially two grounds for that belief. First, that the Planning Commission did not act in accordance with applicable state law and, therefore acted illegally and second, that there is substantial evidence to support the approval of the application.

Illegality

The applicant makes numerous arguments related to the legality of the Planning Commission denial and the process followed by the City. Primarily they center around the application of §10-9a-509, Utah Code annotated.

The core of the argument is that the Planning Commission was obligated to approve the Application, and therefore, a denial is illegal because it conflicts with §10-9a-509(1)(a)(ii) Utah Code Annotated which provides that:

(ii) An applicant is entitled to approval of a land use application if the application conforms to the requirements of the applicable land use regulations, land use decisions, and development standards in effect when the applicant submits a complete application and pays application fees, unless:

- (A) the land use authority, on the record, formally finds that a compelling, countervailing public interest would be jeopardized by approving the application and specifies the compelling, countervailing public interest in writing; or
- (B) in the manner provided by local ordinance and before the applicant submits the application, the municipality formally initiates proceedings to amend the municipality's land use regulations in a manner that would prohibit approval of the application as submitted.

The Applicant's argument is essentially that, once he has submitted a completed application the Planning Commission is required by §509(1)(a)(ii) to approve the Special Exception. *Applicant January 30, 2023 Memoranda, Page 3*. In this interpretation of the statute, it would be inappropriate for the Planning Commission to hold an evidentiary

hearing, a public hearing, or to determine if the Applicant met his burden of proof – all requirements of the Millcreek Code. He argues that once the application is complete, and contains the required information, the Planning Commission is merely an administrative body that has no choice but to approve the request for a Special Exception.

Such an interpretation of the statute is plainly in error and is in direct conflict with the application of other state statutes. Millcreek City clearly has the authority to provide for a process that includes an evidentiary element and the weighing of that evidence. For example, §10-9a-102(2) Utah Code Annotated, which sets forth the purposes and general land use authority of LUDMA states that:

To accomplish the purposes of this chapter, a municipality may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that the municipality considers necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing:

- (d) structures;
- (e) buildings;
- (o) considerations of surrounding land uses to balance the foregoing purposes with a landowner's private property interests and associated statutory and constitutional protections.

Similarly, §10-9a-501(4)(b), Utah Code Annotated provides that:

A land use authority may establish or modify other restrictions or requirements other than those described in Subsection [\(4\)\(a\)](#)¹, including the configuration or modification of uses or density, through a land use decision that applies criteria or policy elements that a land use regulation establishes or describes.

¹ The code section referred to, §10-9a-501(4)(a) provides for the adoption of zoning districts and the general uses allowed in each zone.

Finally, §10-9a-104(1) Utah Code Annotated, states that “This chapter does not prohibit a municipality from adopting the municipality’s own land use standards”.

Clearly, LUDMA specifically grants the City the authority to enact land use regulations that govern the subject of this appeal. This is in addition to the broad powers granted to Utah municipalities by the general welfare provisions of §10-8-84 of the Utah Code. See *State v. Hutchinson*, 624 P.2d 1116 Utah 19800. The only restriction on the City’s ability to adopt the land use standards that it deems appropriate is that it “may not impose a requirement, regulation, condition, or standard that conflicts with a provision of this chapter, other state law, or federal law. §10-9a-104(2) Utah Code Annotated. Once the City has established those regulations, it is bound by them and must comply with the provisions of its own regulations. §10-8-509(2) Utah Code Annotated. The Applicant has failed to provide any legal authority that indicates that the City’s process or the actions of the Planning Commission conflicts with LUDMA, other state law, or federal law. To the contrary, the City’s adoption of an ordinance that includes certain criteria and an evidentiary process and the Planning Commission actions based on that ordinance are allowed by LUDMA and, pursuant to §10-9a-30(1) Utah Code Annotated, the Planning Commission is required to apply the plain language of those regulations.²

The requirements of §509(1)(A)(ii) still apply to this case, however, they apply after the relevant provisions of the Millcreek Code have been followed. In other words, if the Planning Commission, after its evidentiary hearing, concludes that the Applicant has met the applicable criteria for a Special Exception, then it is obligated to grant the exception. In this case, the Planning Commission did not make that determination.

² §10-9a-509(2) UCA requires that “A municipality is bound by the terms and conditions of applicable land use regulations and shall comply with mandatory provisions of those regulations.”

The Applicant had numerous other quibbles with the City process, however, he provided no evidence that the City's process or requirements are in conflict with other provisions of LUDMA, other state law or federal law. For the reasons described above, those arguments also fail.

Finally it should be noted that the Applicant raised public clamor as an issue. The only public input in the record is a denial recommendation by the local community council and one resident who spoke unfavorably in the public hearing before the Planning Commission. This input by citizens certainly does not seem to rise to the level of public clamor, unless any unfavorable comment constitutes public clamor. The Applicant has pointed to no evidence in the record that the Planning Commission was unduly swayed by those comment or favored those comments over the weight of the evidence that was presented.

The process followed by the Planning Commission, as set forth in the Millcreek Code, was in accordance with the law and the Planning Commission did not err.

Substantial Evidence

The scope of review in this case is limited to the record before the Planning Commission. The review is for the purpose of determining if the Planning Commission erred. The standard for review is if each of the findings of the Planning Commission are supported by substantial evidence. The only body authorized to accept and weigh evidence in this case is the Planning Commission.

The Planning Commission failed to provide detailed findings of fact and conclusions of law to support their decision. The sole supporting statement was that they

“determined that the property located at 3682 South Craig Circle is not sufficiently ‘unusual or extraordinary’ to the extent that would warrant a special exception ...”

On February 16, 2023, the Utah Court of Appeals issued a decision in the case of *Northern Monticello Alliance LLC, v. San Juan County Commission, Sustainable Power Group LLC, and Latigo Wind Park LLC*, 2023 UT App 18 (Utah App. 2023). The Appeals Court’s ruling in this case is dispositive of the matter at hand.

In *Northern Monticello*, the San Juan County Commission issued a land use decision regarding a conditional use. The Planning Commission failed to provide adequate written findings of fact or conclusions of law about how it arrived at its decision. The decision was appealed to the appropriate appellate authority, the San Juan County Commission (the “County Commission”). Despite the inadequate findings by the planning commission, the County Commission upheld the decision of the planning commission. In a subsequent appeal to district court, the court reviewed the decision of the County Commission and again upheld the decision of the planning commission. The Court of Appeals held that that since the planning commission had failed to provide adequate findings, an appellate body, limited to a review on the record, could not make a substantial evidence determination. As a result, it reversed the decision of the district court and remanded it for further proceedings. A part of the rationale for the decision is that “Without findings against which to judge whether substantial evidence exists to support them, review of the evidence is-in reality-a de novo review. *Northern Monticello*, at ¶21.

A similar case is *McElhaney v. City of Moab*, 2017 UT 65. The *McElhaney* court reviewed a district court decision regarding a land use decision made by the city council (sitting as the land use authority). Like the facts in *Northern Monticello* and the case at

hand, the city council in the *McElhaney* case failed to produce adequate written findings of fact. The *Northern Monticello* court quoted the *McElhaney* decision stating:

Without sufficiently detailed findings that disclose the steps by which an administrative agency reaches its ultimate factual conclusions, this court cannot perform its duty of reviewing the order in accordance with established legal principles and of protecting the parties and the public from arbitrary and capricious administrative action. On appeal, a court can perform its duty only if the [land use authority] has created findings revealing the evidence upon which it relies, the law upon which it relies, and its interpretation of the law. *Northern Monticello* at ¶23, quoting *McElhaney* at ¶36.

In this case, the Planning Commission's short statement that the Property is not sufficiently "unusual or extraordinary" are insufficient to allow for an appellate review. As the court stated in *Northern Monticello*, "... cursory declarations are wholly inadequate." *Northern Monticello*, at ¶25.

Based on the foregoing caselaw, it is apparent that the Planning Commission did not provide adequate findings and conclusions for an full appellate review. However, this situation can be remedied by the Planning Commission if it supplements the record by providing findings and conclusions that provide a detailed explanation of how it reached its decision to deny the application.

At the hearing on October 26, 2022, each party was present, submitted evidence, and had the opportunity to refute the other party's evidence. Therefore, it is not necessary for the Planning Commission to hold a new hearing unless it has the power and desire to do so.³

CONCLUSION

Based on the forgoing, this case will proceed as follows:

³ Also, there appears to be no statutory support for this hearing officer's ability to order such a rehearing.

1. A partial decision on the issue of the legality of the process set out in the Millcreek Code and the interpretation of applicable state statutes and caselaw has been decided in favor of the City as set forth in the Analysis set forth above.

2. The open issue in this case is whether or not the Planning Commission has substantial evidence to support its decision. It is hereby requested that the Planning Commission supplement the record by providing detailed findings of fact and conclusions which explain the basis for its decision in this case.

3. The Planning Commission will be given the opportunity to supplement the record as described above until the close of business on March 6, 2023. Any supplementation of the record should be delivered by email to the hearing officer by that time and date.

4. Upon receipt of the supplemented record, if any, from the Planning Commission, this case will proceed to a final decision which will be issued within 5 days of receipt of the supplementation. If the Planning Commission fails to supplement the record by the date and time set forth above, then a final decision on the appeal will be made without such findings.

Dated this 23rd day of February, 2023.



J. Richard Catten
Millcreek City Land Hearing Officer



**Minutes of the
Millcreek Planning Commission
October 26, 2022
5:00 p.m.
Special Meeting**

The Planning Commission of Millcreek, Utah, met in a special public meeting on Wednesday, October 26, 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 (absent)
Scott Claerhout (electronic)
David Hulsberg (excused)
Christian Larsen
Nils Per Lofgren (excused)
Skye Sieber
Ian Wright

City Staff

John Brems, City Attorney (electronic)
Elyse Sullivan, City Recorder
Francis Lilly, Planning & Zoning Director
Kurt Hansen, Facilities Manager
Brad Sanderson, Planning Manager
Katie Larsen, Planner
Robert May, Long Range Planner
Sean Murray, Planning Admin. Asst.
Carlos Estudillo, Planner (electronic)

Attendees: T. Mazejy (electronic), Justin Heppler (electronic), Nancy Carlson Gotts, Laurel Bevans, Angela Kirsling, Steve Schaller, Herb Jimenez, Rosemary Stum, Angelo Calacino, Robert Madsen, Wade Budge, McCall Judd, Dan Milar, Warren Lloyd, LeeAnne Hansen

SPECIAL MEETING – 5:00 p.m.

TIME COMMENCED: 5:00 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-22-003, Request for a Residential Compatibility Overlay Zone (RCOZ) C Special Exception to Construct a Single-Family Dwelling with a Reduced Front Yard Setback from 25 to 18 Feet Location: 3682 S. Craig Circle Applicant: Warren Lloyd Planner: Brad Sanderson

Brad Sanderson said the request was for a reduced front yard setback from 25 to 18 feet on the newly created lot at 3682 S. Craig Circle. He highlighted the lot on the former and new subdivision plats and briefly gave a history of the property. He showed the commission the proposed site plan with and without the exception. For the exception, the commission must determine whether the lot circumstances are unusual or extraordinary on the basis of unusual lot shape, unusual or difficult terrain, drainage problems, or another reason. The burden of proof was on the applicant. Sanderson highlighted existing conditions of the property which included a large existing tree which the applicant hoped to maintain, steep grade on the back

of the lot, and a drainage easement in the rear of the property. The proximate neighborhood, properties within 150 feet surrounding the subject property, consisted of 20 total properties and 16 residential structures. All properties were within the R-1-8 Zone, although properties ranged between 7,000 and 30,000 sq ft. in size, and the median property size was approximately 10,000 sq ft. The majority of the homes had 30 foot front yard setbacks but there were some exceptions. He presented a table of the neighboring lots' data on lot size, shape, terrain, drainage issues, and front yard setback. He showed the commission the buildable area of the subject lot, which could accommodate a structure with a 60 by 60 foot footprint. The buildable area could be extended using retaining walls and/or landscape tiers. He proposed two options for the house layout in the buildable area that met all the setback requirements. Staff's conclusion was that the burden of demonstrating that the requested front yard setback reduction, from 25 feet to 18 feet, was compatible with the front yard setbacks of other homes within the proximate neighborhood area had not been met. He reported that the East Mill Creek Community Council provided a unanimous recommendation for the commission to deny the proposed RCOZ C exception. Sanderson also recommended denial.

Commissioner Reid asked if the other lots in the cul-de-sac would want special exceptions. Sanderson said only one had started building, and they did not seek one. He noted there was a piped gulley in the rear of the homes in an easement. Commissioner Reid questioned the applicant's statement that the proposed residence maintains similar setbacks of the existing homes on Craig Circle. Sanderson said "similar" may be subjective.

Warren Lloyd, architect with Lloyd Architects, said the lot configuration was unique because it contained a large percentage of drainage. He felt the proposed home design was appropriate to the neighborhood. The 7 foot exception would be on the front corner of the house and the corner of the proposed front porch. The unusual lot shape had a prominent bulb that created an unusual setback. There was also a drainage easement on the side and rear of the lot. Commissioner Reid asked if there would be a basement. Lloyd said there would be a walkout basement.

Wade Budge, representing property owner, commended Warren Lloyd's design in context with the neighborhood. His interpretation of the code was that this type of application was appropriate for the exception. He felt an appropriate condition for the approval of the exception would be an average 30 foot front yard setback, and the exception should only be in the two requested points. He described the lot size, terrain, drainage problem, and double cul-de-sac as making the lot unusual. He stated that there would not be a binding precedent with the exception because of the lot differences. He recommended approval of the setback reduction.

LeeAnne Hansen, East Mill Creek Community Council, said "unusual" was not "extraordinary." The council felt there could be a precedent set with unusual but not extraordinary lots. The council recommended denial of the application.

Chair LaMar opened the public hearing.

Amy Verkler, 2780 E. Craig Drive, said the lots were recently platted and the proposed homes did not fit the neighborhood. She noted that a house could fit in the buildable area.

She expressed concern with potential exceptions happening with lot 4 which was near her home.

Chair LaMar summarized an emailed comment received from Roger Dudley (see attached).

Chair LaMar closed the public hearing.

Commissioner Sieber said the architectural design could be flexible to fit in the buildable area. Commissioner Larsen said the request was modest, but the buildable area was not unusual and could be accommodated. Commissioner Reid was concerned about setting a precedent. Chair LaMar said there used to be a single family home on the lot. In 2019, the lot was approved to be subdivided into 5 lots and in 2021 it was redesigned and platted into 4 lots. The lots were recently created and therefore not extraordinary. Commissioner Claerhout and Wright agreed with the points of denial.

Commissioner Larsen moved that the Planning Commission deny the RCOZ Option C to grant a special exception pertaining to application file number, RC 22 003. Commissioner Sieber seconded. Chair LaMar called for the vote. Chair LaMar voted yes, Commissioner Reid voted yes, Commissioner Claerhout voted yes, Commissioner Larsen voted, yes, Commissioner Sieber voted yes, and Commissioner Wright voted yes. The motion passed unanimously.

**1.2 Consideration of PUD-22-002, Request for an 8-Unit Multi-Family Development
Location: 1546 E. 3900 S. Applicant: Dan Milar Planner: Katie Larsen**

Katie Larsen said there used to be a single family home on the site. The lot size was 16,651 square feet, and in the R-M zone which lists planned unit developments as a conditional use. The project would consist of eight units, 4 facing 3900 South and 4 facing south toward the surrounding residential area. Units would be accessed from 3900 S., wherein underground parking would be provided for each unit. The project must meet underlying R-M Zone and subdivision requirements found in Title 18, and the preliminary plan did. The proposal met or exceeded code requirements with 2 covered parking spots for each unit, 3 guest parking stalls, 50% lot coverage, 42% open space, a 25 foot road width, and the required design standards. The proposal comprised of 80+% brick and stone on the façade, visual breaks, horizontal articulation, and change in materials and texture for greater than 50% of the façade. She showed the commission the proposed site plan, building elevations, and landscaping plan. The property currently had many mature trees that the applicant had preserved, though, where trees have had to be removed, new ones were to be planted per Millcreek Code 19.77. Along the front of the property, the applicant proposed enhanced landscaping to be allowed a lesser setback of 20 feet as per Millcreek Code 19.77, in which the R-M zone required 25 feet.

The Millcreek Community Council voted to recommend approval of the application, though there was one abstaining vote due to concerns over the ditch onsite. The East Mill Creek Community Council unanimously voted to recommend approval. Larsen's conclusions were that the development met all requirements necessary for a subdivision per Millcreek's subdivision code. The plat would create shared access, parking, public utility, and other related easements necessary for the development to function as a subdivision. Governing bylaws would be private and would be required to be recorded at the time the plat was

recorded. No detriments had been identified by staff pertaining to this specific application and therefore no conditions of approval were determined as necessary. The proposal was subject to further review by planning and engineering staff. Larsen recommended approval of the application as proposed.

Chair LaMar asked about the height of the underground parking. Larsen did not recall, but noted it met code.

Dan Milar, applicant, said the garage had to be eight feet in height. Commissioner Reid asked about the retention pond. Milar said it was shallow, possibly 2 feet deep. Commissioner Reid asked about standards for retention landscaping. Lilly said there were not good standards. Larsen noted it would be turfed. Commissioner Reid asked for landscaping that was more drought tolerant. Milar said he would consider variation if it did not impact percolation. Commissioner Wright noted the residents could use it as open green space.

Chair LaMar opened the public hearing.

There were no comments.

Chair LaMar closed the public hearing.

Lilly noted the applicant's willingness to work on the landscaping for the retention, so it could be a condition of approval. Commissioner Wright appreciated the open space on the back of the project. Chair LaMar asked for more architectural flair on the rear of the building. Commissioner Wright agreed.

Commissioner Reid moved to approve the conditional use permit as proposed in the plan for PUD-22-002 with one additional condition that the applicant work with the staff to reduce turf and water needs of the stormwater retention pond. Commissioner Claerhout seconded. Chair LaMar called for the vote. Chair LaMar voted yes, Commissioner Reid voted yes, Commissioner Claerhout voted yes, Commissioner Larsen voted, yes, Commissioner Sieber voted yes, and Commissioner Wright voted yes. The motion passed unanimously.

1.3 Consideration of CU-22-017, Request for a Conditional Use Permit to Develop a Multipurpose Paved Trail Along the East Bank and a 120-Foot Bridge Across the Jordan River Location: 761, 797, 821 and 833 West 4060 South Applicant: Salt Lake County Parks and Recreation Planner: Katie Larsen

Katie Larsen said Salt Lake County Parks and Recreation was proposing to develop a 12 foot wide, 1,412 lineal foot multipurpose paved trail along the east bank of the Jordan River, along with a 120 foot bridge that would connect the new trail with the existing Jordan River Trail on the west riverbank. Due to the project location residing entirely within the Agricultural Zone (A-1, A-5), the applicant was required to obtain plan approval for the proposed trail improvements with the Millcreek Planning and Zoning Department. Public and quasi-public uses are listed as a conditional use in the zone and staff analysis would be based on Standards for Approval per Millcreek Code 19.84.060. The Jordan River Parkway is a north-south system of trails that parallel the Jordan River, connecting 45 miles through Salt Lake County. The Millcreek General Plan identifies the Jordan River Parkway as an area for

improvements in Goal O-7: Identify and maintain recreational access to Jordan River Parkway for all residents and visitors, with three associated strategies. She showed the commission the proposed site plan and a rendering of the bridge. There would be wayfinding signage on two junctions of the proposal, one east of the bridge and one entering 4060 South. The bridge would extend 120 feet from east to west to meet the existing Jordan River Trail. The bridge would need to satisfy all building and engineering requirements.

Larsen described the environmental impact and access of the area. The Jordan River has a long history of straightening, channelization, and dredging. This has resulted in long segments of steep, eroding banks. Erosion causes excess sediment in the water and adversely impacts water quality and the river's health. Without bank stabilization, the banks will continue to erode, damaging habitats and affecting water quality. Noxious weeds are another major threat. As the dominant vegetation on the current proposed project area (including phragmites, salt cedar, and Russian olive), if not contained, they will continue to spread and increase in density, making this necessary work more expensive in the future, and increasing the risk of wildfire. Salt Lake County is working to mitigate as many detriments as possible by working with groups like the Jordan River Commission. The trail and bridge are being built in the AE flood plain, meaning there is a 1% annual chance of flooding, this detriment is to be addressed and approved by the City's Flood Plain Engineer as per Millcreek Code 17.24 and 19.74. She reported that Salt Lake County has a perpetual access agreement to 4060 South, making access to the public road by trail users legal. Millcreek and the county were currently working to build a park and trailhead along Meadowbrook Expressway (4000 South), which would serve as an access point and parking area for trail users. If parking became an issue on 4060 South, residents may place no parking signage.

Larsen said the Millcreek Community Council unanimously voted in favor of the project. Members expressed concerns of parking issues arising on the private lane that the trail would connect to. Larsen acknowledged the proposal met preliminary requirements and was supportive of the General Plan's goals. She recommended approval of the application.

Chair LaMar asked about the access on 4060 S. being only pedestrian. Larsen said 4060 S. was a private road and the expected access would only be pedestrian and bicycle. Chair LaMar asked if vehicles could use 4060 S. for parking. Larsen said there would not be parking on or near 4060 S. Lilly said Salt Lake County owned part of the right-of-way on 4060 S., so the park users could use it. Larson noted a nearby parking lot off of 3900 S. for trail users.

Angelo Calacino, applicant, said there were no plans to do any off street parking accessible from 4060 S. There would be a trailhead and vehicular parking added off 3900 S. He said there were also plans to add a boat ramp in the area. This section of trail would end where it met the new access bridge. The property to the east of the bridge would remain as open space and only accessible for the county to 4060 S. for maintenance purposes. Commissioner Sieber asked if the bridge would be similar in design to others nearby. Calacino said it had a curved design and would be wide enough for county vehicles to drive over. The county would maintain the bridge.

Chair LaMar opened the public hearing.

Steve Schaller, 735 W. 4060 S., said 4060 S. was a private lane. He was worried about vagrants and other traffic having more access to his neighborhood.

Angela Kirsling, 750 W. 4060 S., said her property was the closest to the park. She said there were no streetlights in the area, and it was a safety concern with the amount of homeless people. She inquired about a fence. The private lane was not big enough for side by side cars and did not have any room for parking.

Herb Jimenez, 4060 S. 742 W., said people were crossing his property to access city-owned property. He felt an east side Jordan River trail was not needed since it was on the west side. He asked if the bridge would replace the existing nearby bridge. He acknowledged water overflowing from the river on the banks.

Calacino said a simple fence would be installed around the neighboring three lots to the west of the county's open space, so trail users would not access the private property, but the residents could access the trail. A field fence had been installed around the open space to prevent vehicles from accessing the property. The access from 4060 S. would have bollards to prevent vehicles and only allow pedestrians and cyclists. The Jordan River Trail on the east side was part of the County's and Millcreek's master plans. The county property would be maintained as open space. The nearby bridge to the northwest would remain intact to create a loop for users. Commissioner Sieber asked if there were public use hours for the Jordan River Trail and how it was enforced. Calacino said it was dusk to dawn, and local law enforcement helps police it. He said county vehicles were authorized to be on the trail for maintenance, but not public vehicles. There were bollards and fences to deter vehicular access.

Chair LaMar closed the public hearing.

Commissioner Wright requested more consideration for parking. He thought having more people recreating would help decrease problems in the neighborhood. Chair LaMar and Commissioner Larsen agreed. Commissioner Larsen was in favor of extending the trail as far east and west as possible. He asked why there would not be "no parking signs" placed on 4060 S. Katie Larsen said they could be as a condition. Calacino said it was a private street, so the county would have to work with the other owners. The county would not advertise trail access from 4060 S. He noted that authorized use did deter unauthorized use of the property. Commissioner Sieber requested the applicant work with the other property owners to discourage parking on the private street, though not necessarily through the use of signs.

Commissioner Larsen moved that CU-22-017 be approved based on the findings and conclusions found in the staff report with the additional condition that the applicant work with the property owners along 4060 S. to discourage unauthorized parking. Commissioner Sieber seconded. Chair LaMar called for the vote. Chair LaMar voted yes, Commissioner Reid voted yes, Commissioner Claerhout voted yes, Commissioner Larsen voted yes, Commissioner Sieber voted yes, and Commissioner Wright voted yes. The motion passed unanimously.

1.4 Consideration of SD-22-012, Request for a Multi-Family Subdivision Project Consisting of 89 Residential Units Location: 1395 E. Miller Avenue Applicant: PEG Development Planner: Robert May

Robert May said the application was a technicality. The commission reviewed the conditional use permit application in July 2022. There was technicality in the land configuration that needed to be fixed to accommodate the existing and new Brickcreek development. Chair LaMar asked if the building went from 5 stories to 6. May said no, it was a typo in the staff report.

McCall Judd, PEG Companies, said nothing had changed from the conditional use permit application. They were cleaning up the land and creating two lots.

May said the Millcreek Community Council recommended approval of the application. Commissioner Sieber clarified if there were two motions to be made. May confirmed.

Chair LaMar opened the public hearing.

There were no comments.

Chair LaMar closed the public hearing.

Commissioner Larsen moved to grant preliminary subdivision approval of the Brick Lofts and Office Condominium plat as described in SD-22-012 with the conditions recommended in the staff report. Commissioner Wright seconded. Chair LaMar called for the vote. Chair LaMar voted yes, Commissioner Reid voted yes, Commissioner Claerhout voted yes, Commissioner Larsen voted, yes, Commissioner Sieber voted yes, and Commissioner Wright voted yes. The motion passed unanimously.

Commissioner Larsen moved to grant preliminary subdivision approval of the Brickcreek Phase 2 plat as described in SD-22-012 with the conditions recommended in the staff report. Commissioner Wright seconded. Chair LaMar called for the vote. Chair LaMar voted yes, Commissioner Reid voted yes, Commissioner Claerhout voted yes, Commissioner Larsen voted, yes, Commissioner Sieber voted yes, and Commissioner Wright voted yes. The motion passed unanimously.

2. Commission Business

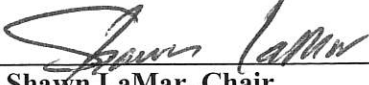
2.1 Updates from the Planning and Zoning Director

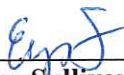
There were no updates.

3. Calendar of Upcoming Meetings

- Millcreek Community Council Mtg., 11/1/22, 6:30 p.m.
- Canyon Rim Citizens Association Mtg., 11/2/22, 7:00 p.m.
- East Mill Creek Community Council Mtg., 11/3/22, 6:30 p.m.
- Mt. Olympus Community Council Mtg., 11/7/22, 6:00 p.m.
- Millcreek Stakeholder Mtg., 11/9/22, 7:00 p.m.
- Historic Preservation Commission Mtg., 11/10/22, 6:00 p.m.
- City Council Mtg., 11/14/22, 7:00 p.m.
- Planning Commission Mtg., 11/16/22, 5:00 p.m.

ADJOURNED: Commissioner Larsen moved to adjourn the meeting at 6:38 p.m. Commissioner Wright seconded. Chair LaMar called for the vote. Chair LaMar voted yes, Commissioner Reid voted yes, Commissioner Claerhout voted yes, Commissioner Larsen voted yes, Commissioner Sieber voted yes, and Commissioner Wright voted yes. The motion passed unanimously.

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

Attest: 
Elyse Sullivan, City Recorder

From: [Brad Sanderson](#)
To: [Planning Commission](#)
Cc: [Elyse Sullivan](#)
Subject: FW: Warren Loyd's Exception Request
Date: Monday, October 24, 2022 4:53:32 PM

All,

The below email was sent to Millcreek staff regarding one of the applications you will be considering this Wednesday concerning an RCOZ C – special exception.

I did not want to send this earlier as I wanted it to be fresh on your minds for this week and so as to not confuse this with any of last week's agenda items.

From: nancy carlson-gotts <[REDACTED]>
Sent: Saturday, October 8, 2022 7:49 PM
To: Roger Dudley <[REDACTED]>
Cc: Brad Sanderson <bsanderson@millcreek.us>
Subject: Re: Warren Loyd's Exception Request

Thank you Roger, will include in our submission

On Saturday, October 8, 2022 at 05:43:08 PM MDT, Roger Dudley <[REDACTED]> wrote:

Nancy -- thank you for your call today to discuss Mr. Lloyd's ("Lloyd") request to reduce the front yard setback from 25' to 18' on the property at 3682 South Craig Circle ("Property"). Respectfully, I request you include this email message with the EMCC's written notice to Millcreek City Planning Commission. And, as noted above I have copied Mr. Brad Sanderson.

First, we are pleased, delighted, and 100% supportive of the development of four residential lots on the property formerly known as the Boyd property, now developed by Rob Reynolds.

Second, as an adjacent property owner to the Property, we are 100% supportive of the setback adjustment requested by Lloyd. The request to reduce the setback to 18' is logical and prudent based on the Property's frontage on the South Craig Circle curve. As the adjacent neighbor, we strongly request the EMCC and Millcreek Planning Commission to accept and adopt the request to reduce the front yard setback. However, as a responsible response to the requested front yard setback, the EMCC might consider a lesser adjustment; i.e. authorize a setback of 20' or a compromise that will accommodate the City's requirement and Lloyd's request. As you know, the Property footprint is not a basic flat rectangular lot, and a compromise certainly could/will satisfy all concerned participants.

Please note, I do not represent the owner of the Property nor have I spoken with Mr. Lloyd regarding his request. but, as an adjacent property owner, an agreeable

compromise certainly can be granted. You indicated your concern about not granting variances to upset precedent. However, we all know variances are discussed and agreed to accommodate all parties.

As requested, I ask you to attach this email with the EMCC's written comment to the City at a minimum, My best outcome would be for the EMCC to reverse its recommendation and support Lloyd's request or offer a compromise as suggested above.

Regards,

--

Roger D. Dudley





Planning Commission Staff Report

Date: October 26, 2022
To: Millcreek Planning Commission
File No.: RC-22-003
Re: RCOZ C Special Exception - Pertaining to the Front Yard Setback
Address: 3682 East Craig Circle.
Zone: R-1-8/RCOZ.
Applicant: Warren Lloyd (architect)
Presenter: Brad Sanderson, AICP
Planning Project Manager

SYNOPSIS AND SCOPE OF DECISION

Synopsis:

Warren Lloyd, on behalf of Mark Morris (property owner), has filed an RCOZ Option C application, requesting that the Planning Commission review and make a special exception to allow a front yard setback reduction from 25 feet to 18 feet for a new home to be constructed on a newly created lot. A 25-foot front yard setback is required by the R-1-8 Zone. The property is located at 3682 East Craig Circle and is a lot of record known as Lot 1 within the recently created Boyd Circle subdivision.

The applicant has provided a letter stating their reasons for requesting the setback reduction for which the Planning Commission should consider in determining whether there are unusual or extraordinary circumstances and whether a special exception for a front yard setback reduction is warranted, (see letter attached).

Scope of Decision:

The City's RCOZ (Residential Compatibility Overlay Zone) standards are intended to promote public welfare and 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 code acknowledges that there is a wide variation of circumstances incident to a residential application and the need for architectural freedom and adopts a procedure that provides for strict application of standards, and two avenues for deviations of those standards subject to neighborhood compatibility. Specifically, "Option C allows a Planning Commission to consider at a public hearing a special exception for unusual or extraordinary circumstances that justify deviations from one or more of the limitations under Options A and B." (Millcreek code 19.71.010).



An RCOZ C Special Exception request is not like a typical application that comes before a community council for review and a recommendation; rather it is, per the RCOZ standards, an *evidentiary hearing*.

Specifically, the code states: “a decision on the application shall be based on the evidence presented at the hearing. **The burden of proof shall rest with the applicant.** The Planning Commission may impose such conditions and limitations upon the approval of an exception to the requirements of this chapter necessary to prevent or mitigate adverse effects on the properties in the neighborhood of the subject properties, consistent with the standards of this chapter” (Millcreek code 19.71.050(B)).

The applicant must show the *specific provisions* from which the applicant seeks exceptions and the requested relief. In addition, the applicant bears the burden to demonstrate that:

- a. 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.
- b. 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.
- c. 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.
- d. 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).
- e. The front yard setback will be at least eighteen feet. (Millcreek code 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:

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

Applicant's Letter

(see attached)



ANALYSIS OF PROXIMATE NEIGHBORHOOD

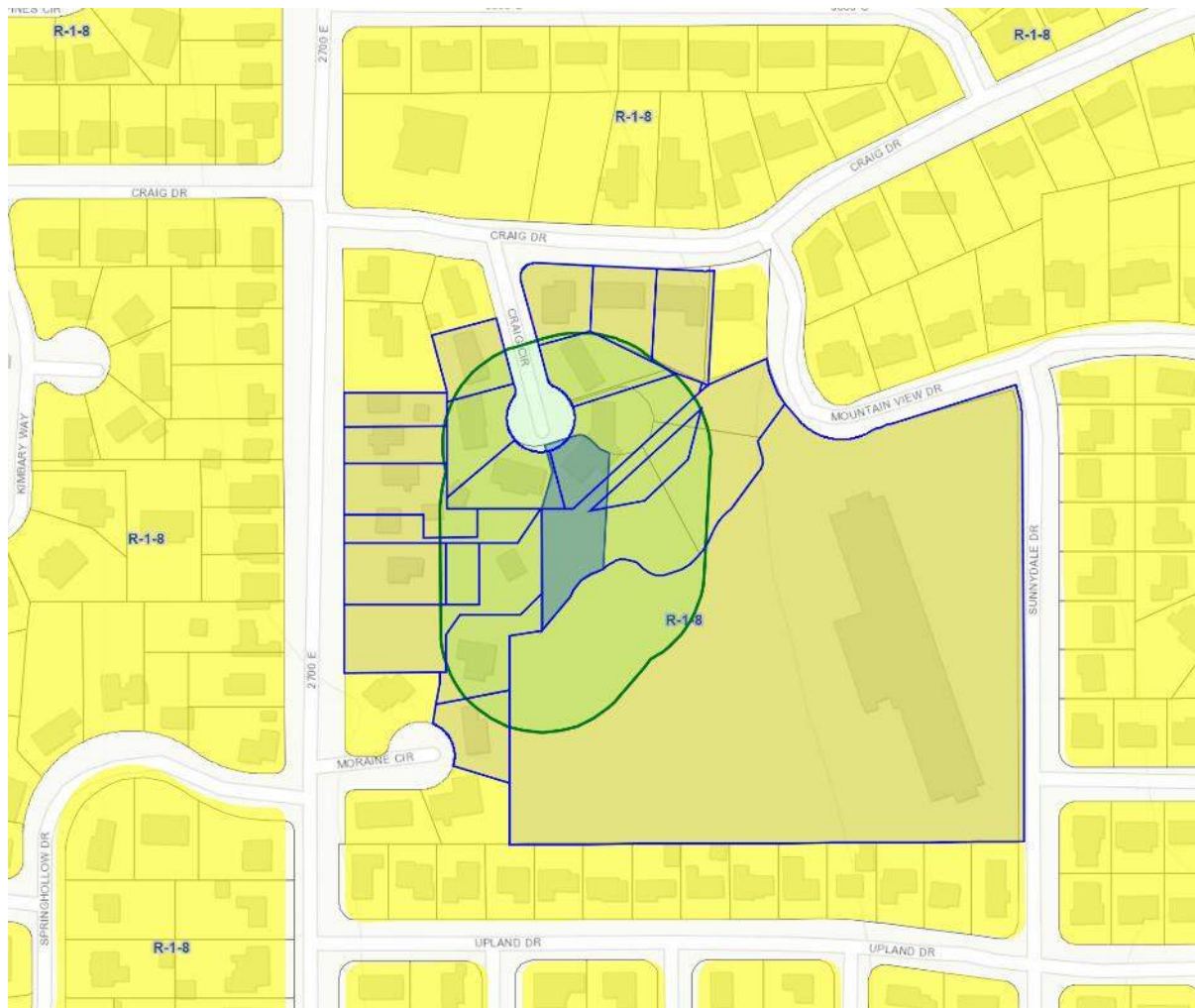
Public Notice

Millcreek code requires that notice be sent to all property owners of record within 300 feet as measured from the boundary of the subject lot, no less than 10 days prior to the public hearing, scheduled for October 26th. Staff satisfied this requirement by sending out a notice on September 27th, 2022.

The purpose for the advance notice is to inform property owners and give them the opportunity to attend the Community Council meeting and comment on the application.

Proximate Neighborhood:

The RCOZ standards establish a proximate neighborhood of 150 feet as measured from the subject. The purpose of this is to establish a common standard for neighborhood compatibility. In this case, the proximate neighborhood includes 20 individual properties (including the subject property) with 16 constructed single-family homes.



Since the applicant is requesting a front yard setback reduction, Staff has provided a front yard setback comparisons for each home within the ‘proximate neighborhood’. These setbacks were calculated by scaling aerial imagery, measuring between the edge of sidewalk and closest point of the building façade nearest to the adjoining street (see image below).



The front yard setbacks for homes within the ‘proximate neighborhood’, range between 27 feet and 63 feet with an average front yard setback of 39 feet. The median setback is 30 feet. This excludes residential structures addressed at 3711 S. 2700 E. and 2725 E. Moraine Circle, due to uniquely irregular lot shape or lack of property frontage; thus causing each residential structure to be setback a substantial distance from the right of way which would only further increase both the median and average front yard setbacks. The street side yard setback for the corner lot, addressed at 2754 S. Craig Drive, was also excluded because this house is both addressed from and oriented to the north onto Craig Drive (see table)



Address	Zone	Lot Size (sf)	Lot Shape	Unusual or Difficult Terrain	Drainage Issues	Front Yard Setback
2780 S. Craig Drive	R-1-8	13,068	Rectangular - Traditional Frontage	Flat	Not apparent	30 feet
2768 S. Craig Drive	R-1-8	10,890	Rectangular - Traditional Frontage	Flat	Not apparent	30 feet
2754 S. Craig Drive	R-1-8	10,018	Square – Corner lot	Flat	Not apparent	30 feet (north) 20 feet (west)
3665 S. Craig Circle	R-1-8	12,633	Trapezoid - Cul-de-sac	Flat	Not apparent	30 feet
3685 S. Craig Circle (Lot 4)	R-1-8	16,670	Trapezoid - Cul-de-sac	Rear yard only	Rear yard only	No structure
3686 S. Craig Circle (Lot 3)	R-1-8	19,259	Pie shape - Cul-de-sac	Rear yard only	Rear yard only	No structure
3684 S. Craig Circle (Lot 2)	R-1-8	17,277	Pie shape - Cul-de-sac	Rear yard only	Rear yard only	No structure
3682 S. Craig Circle (Lot 1)	R-1-8	20,373	Rectangular - Cul-de-sac	Rear yard only	Rear yard only	No structure
3678 S. Craig Circle	R-1-8	10,385	Triangular - Cul-de-sac	Flat	Not apparent	28 feet
3676 S. Craig Circle	R-1-8	10,890	Trapezoid - Traditional Frontage	Flat	Not apparent	30 feet
3660 S. Craig Circle	R-1-8	9,583	Square - Traditional Frontage	Flat	Not apparent	30 feet
3665 S. 2700 E.	R-1-8	17,860	Trapezoid - Traditional Frontage	Flat	Not apparent	44 feet
3683 S 2700 E.	R-1-8	7,405	Rectangular - Traditional Frontage	Flat	Not apparent	43 feet
3685 S. 2700 E.	R-1-8	8,276	Rectangular - Traditional Frontage	Flat	Not apparent	44 feet
3691 S. 2700 E.	R-1-8	14,375	Irregular - Traditional Frontage	Flat	Not apparent	63 feet
3695 S. 2700 E.	R-1-8	8,712	Irregular - Very Narrow Frontage	Flat	Not apparent	54 feet
3703 S. 2700 E.	R-1-8	13,068	Rectangular - Traditional Frontage	Flat	Not apparent	63 feet
3711 S. 2700 E.	R-1-8	30,926	Irregular - Traditional Frontage	Rear yard only	Rear yard only	Undetermined
2725 E Moraine Circle	R-1-8	14,810	Irregular - No Frontage	Rear yard only	Rear yard only	Undetermined
2729 E Moraine Circle	R-1-8	12,197	Pie shape - Cul-de-sac	Flat	Not apparent	27 feet

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

Findings:

1. The Planning Commission should make findings on whether the applicant's situation is "unusual or extraordinary" and whether the applicant's proposal addresses the five criteria outlined in City Code. Their findings should be based on evidence supplied by the applicant, who bears the burden of proof.
2. Staff has made the following findings pertaining to the subject property:
 - a. The subject property has a front yard bulge located more or less within the center of the front property line, bulging outward to the north, towards the street.



- b. There is a slight jog on the west or side yard property line causing the width of property to narrow to as little as 90 feet wide.
 - c. There is a 10-foot drainage easement also located along the west or side property line, which largely overlaps with the required side yard setback.
 - d. There is a sudden change in the topography, roughly one third the way back from the front property line (approximately 85 feet from the front property line), in which the property then slopes downward into a natural gully into a natural drainage area.
 - e. There is drainage easement near the bottom of the gully, beginning approximately 109 feet back from the front property line, as measured along the shorter or east, side property line. This easement encumbers the remaining southern portion of the lot.
 - f. The subdivision was originally proposed as a five-lot subdivision, but ultimately received approval as a four-lot subdivision in order to increase the buildable area of each lot.
 - g. At staff's direction, the developer acquired a portion of the neighboring property to the west (Upland Terrace Lot 5) for the purpose of widen the buildable area of the subject property.
 - h. The front yard bulge, referenced within the applicant's letter, only further increases the lot depth, or buildable area, of the subject property.
 - i. The buildable area is the remaining area whereupon a house can be built after excluding all setbacks, easements, and other encumbrances such as topography of significance. In this case, the buildable area of the subject property, is approximately 60 feet deep by 60 feet wide.
3. Staff has suggested that the applicant consider the following options, outside of pursuing Option C of the RCOZ ordinance:
 - a. Cantilever the rear deck a few feet, overhanging the gully.
 - b. Reduce the depth of the rear deck and/or front porch.
 - c. Alter a few feet of the edge of the gully with one or more landscaped tiers, thus increasing the buildable depth of the lot.
 - d. Alter the orientation of the house on the lot.
 - e. Flip or mirror the house, placing the garage on the east side of the home.
 - f. Alter depth of the house.
 4. Since the property is located within the RCOZ and not the FCOZ some changes can be made to the existing grade.



Conclusions:

Based on the findings and analysis listed above, the following conclusions can be made:

1. The subject property does indeed have some unusual circumstances namely a 10-foot drainage easement along the west property line, a “bulged” front property line, a significant grade change (a.k.a. “the gully”) and a drainage easement which encumbers the rear portion of the lot. However, none of these seem to substantially impact the buildable area of the lot.
2. The gully and other easements were considered during the initial planning and development stages; whereupon the subdivision was reduced from five to four lots causing all four lots to be oversized; being that the subject property is among one of the largest lots within the neighborhood.
3. The buildable area is at least 60’ x 60’ and is largely unaffected by the unusual circumstances and would seem to be a reasonable area, in both shape and size, to accommodate most home designs and layouts that would be expected for this neighborhood.
4. Since the property is not located within the FCOZ overlay zone, some changes to the grading could be made to further extend the depth of the buildable area, so long as the changes do not significantly impede the functionality of the drainage system.
5. There are other options where for the same footprint of the desired floor plan could be either slightly modified or oriented to fit on the lot, without the need to further reduce the front yard setback.
6. The R-1.8 Zone currently allows a lesser front yard setback of 25 feet than what most homes within the proximate neighborhood are built at; with the median front yard setback being approximately 30 feet. In no case does the front yard setback of any home, appear to be less than 27 feet.
7. The burden of demonstrating that the requested front yard setback reduction, from 25 feet to 18 feet, is compatible with the front yard setbacks of other homes within the proximate neighborhood area, has not been met.

Recommendation:

1. Based on the Findings and Conclusion listed above, Staff recommends that the Planning Commission take comments at the public hearing and deny the RCOZ “C” request for a special exception, file number RC-22-003, unless during the hearing facts are presented that contradict these findings or new facts are presented, either of which would warrant further investigation by Staff.
2. The East Mill Creek Community Council (EMCCC) considered the applicant’s proposal and have provided both findings and a unanimous recommendation for the Planning Commission to deny the proposed exception, (see attached).

MODEL MOTION

I move that the Planning Commission **Deny** the RCOZ Option C to grant a special exception pertaining to application file number RC-22-003.



Millcreek Planning and Zoning

3330 South 1300 East

Millcreek, Utah 84106

801-214-2700

millcreek.us

File #: RC-22-003

SUPPORTING DOCUMENTS

- 1. Aerial Map**
- 2. Zoning Map**
- 3. Upland Terrace and Boyd Circle Subdivision plats**
- 4. Applicant's Letter**
- 5. Applicant's Site Layout and Elevations**
- 6. Neighborhood Analysis Table and Setback Maps**
- 7. EMCCC's Findings and Recommendations**

E 3600

S Craig Cir



E 3600 S

2700 E

E Craig Dr

S Craig Cir

2700 East

Subject Property

E Mountain View Dr

S 2900 E

E Orchard Dr

E Oakridge Dr

E Upland Dr

Upland Drive

E Upland Dr

E Upland Dr

E Mt Crest Dr

S 2700 E

S 2740 E

S 2780 E

S Ashland Dr

Sunnydale Dr

S 2900 E

S 2940 E

E 3835 S

Wednesday, July 27, 2022

Millcreek Planning and Zoning

Attn: Millcreek Planning and Zoning Commission

Re: Morris Residence

We are writing this letter with regards to an Option C special exception application for a front set back reduction on a single family residential lot in Millcreek. The site has an irregular frontage on the hip between two circles, and the back half of the site has significant slope, a pond, and a large drainage easement which contribute to a reduced buildable area in comparison to adjacent lots.

We are proposing a front setback reduction from 25' to 18' to preserve as much of the natural grade and existing trees canopy as possible. The proposed layout and position of the house only places a few touch points of the primary facade at the 18' set back where the frontage curves around the new cul-de-sac. The majority of the street facing facade would be set back further with a 35' average setback. The proposed layout places the garage face further back than the front of the house face to provide ample driveway space as to not encroach on the sidewalk. The point of the garage closest to the lot line is set back 40'.

The following comments respond to Millcreek zoning section 19.71.050 Option C Special Exception; Planning Commission, Review.

Section 2.

- A. The proposed residence aims to maintain the harmony with RCOZ regulations by maintaining an average setback of greater than 25', only extending into proposed setback reduction at a few points where the lot line is irregular.
- B. The proposed residence maintains a similar setback to the existing homes on Craig Circle, and the proposed areas with an 18' setback are similar to conditions on the previously existing home and another existing home on the circle.
- C. The proposed residence pushes the garage further back than the face of the house to allow adequate driveway space to keep vehicle away from the public side walk.
- D. The roof ridge is not to exceed 40' above the existing grade at any point
- E. The front yard set back will be 18' at the minimum, most of the home's face will maintain a greater setback.

Section 3

- A. The street face of the lot is located at the intersection of two cul-de-sacs which create an unusual frontage that bulges in the middle and sits back in the site on either side. This

creates a condition where the house footprint sits significantly further back than it would on a site with a more regular street face.

- B. There is a sudden and steep hill located roughly one third of the way back on the site that drops down to a pond with another steep hill on the opposite end of the pond. The pond area and hill to the South are part of a flood plane drainage easement, this in combination with the steep slope limits the buildable lot area to roughly the front third of the site.
- C. There are two drainage easements on the site, one is a 10' wide storm drain easement running the entire length of the West property line which includes a buried storage basin. The other a city flood plane drainage easement to the South which occupies nearly half of the overall lot.
- D. The prescriptive requirements specify a 25' setback for the zoning in which this lot is located. Option B of the municipal code specifies that the minimum setback can match conditions of other structures in close proximity, Most of the sites newly have wide rear lots that offer ample building area, the unique rear yard conditions and front yard shape of this lot differ greatly from those conditions and present unique building limitations.

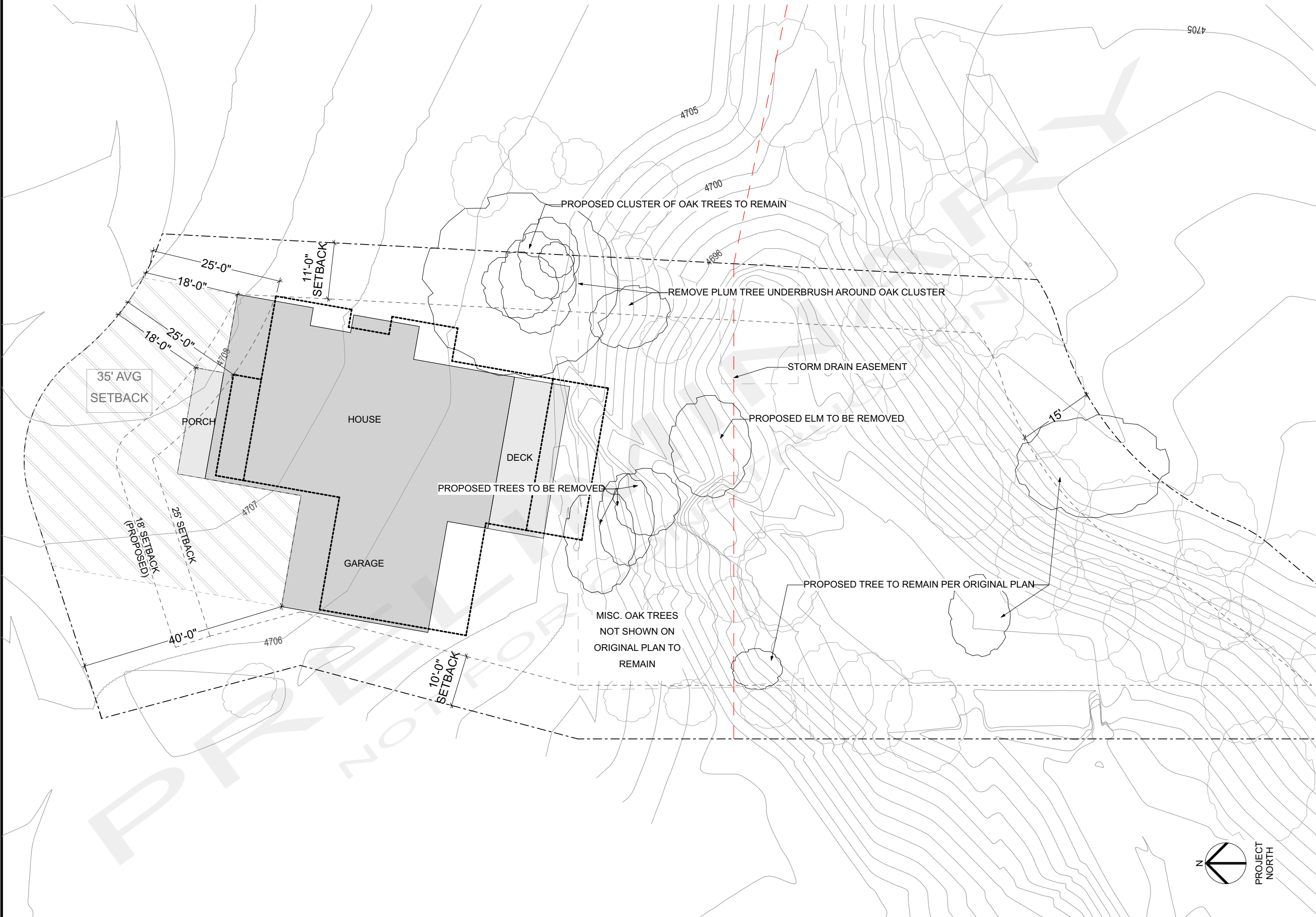
Sincerely,

Warren Lloyd, Principal
Lloyd Architects

BIMcloud: LABIM24 - BIMcloud Basic for Archicad 24/MORR Tuesday, July 19, 2022 3:34 PM

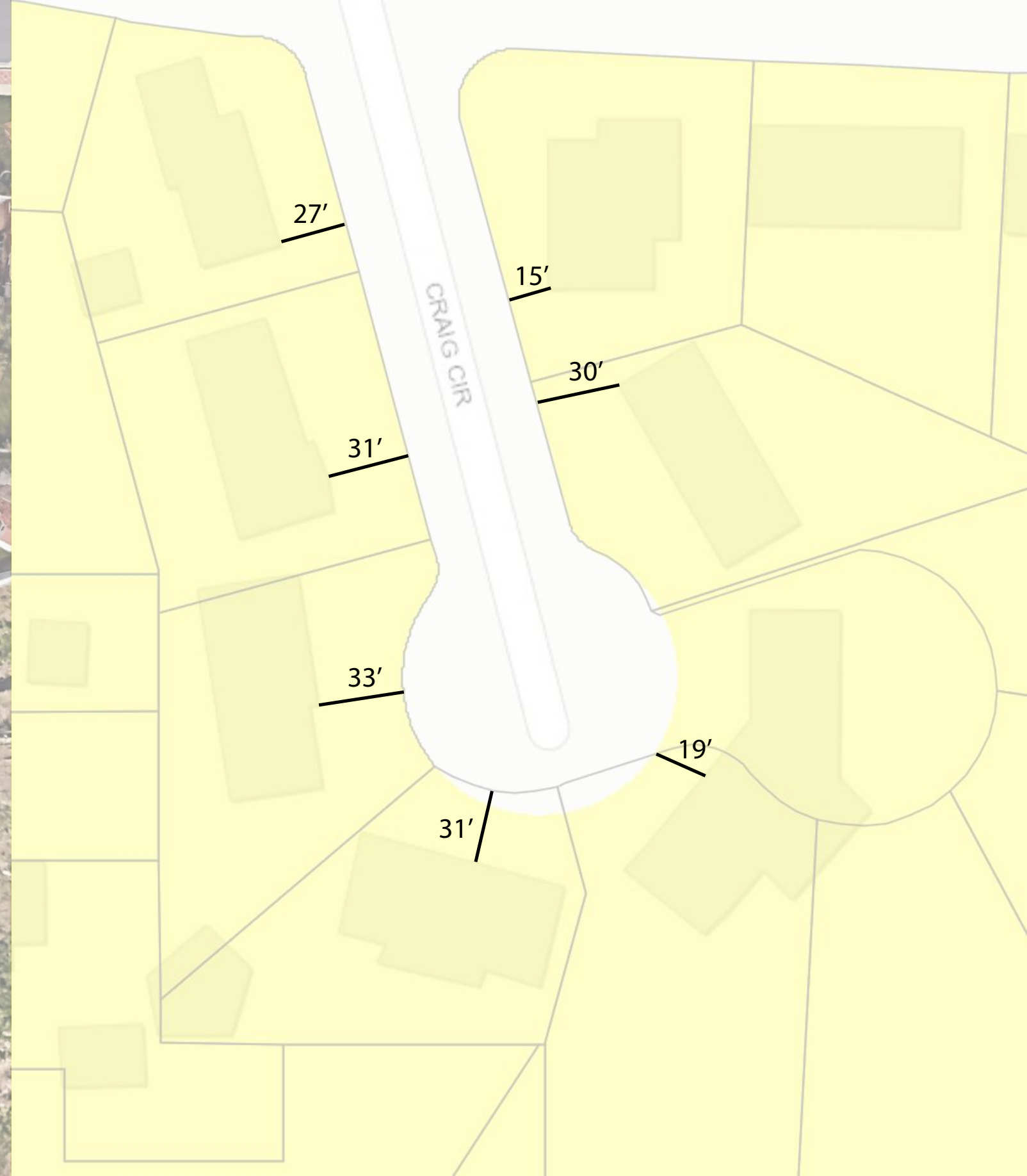
1

SITE PLAN
SCALE: 1/8" = 1'-0"



DRAWING REVISIONS		
REV.	NAME	DATE

IF THIS SHEET IS LESS THAN 24"X36" IT IS A REDUCED PRINT. SCALE ACCORDINGLY.



PIN #
FOR: #CLIENT / COMPANY NAME#

SEAL

#PRELIMINARY DESIGN#
NOT FOR CONSTRUCTION

9/20/22

PROJECT #

- SCHEMATIC DESIGN ###/###/####

REV.	NAME	DATE
------	------	------

LOWER LEVEL PLAN

A101



12'-0"

7'-0"

24'-0"

29'-0"

15'-0"

STORAGE
103

ENTERTAINMENT
102

FAMILY ROOM
103

BEDROOM
100

BEDROOM
100

PLAY ROOM
101

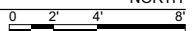
FITNESS
101

PATIO
103

+90'

+90'

2
A302

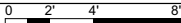
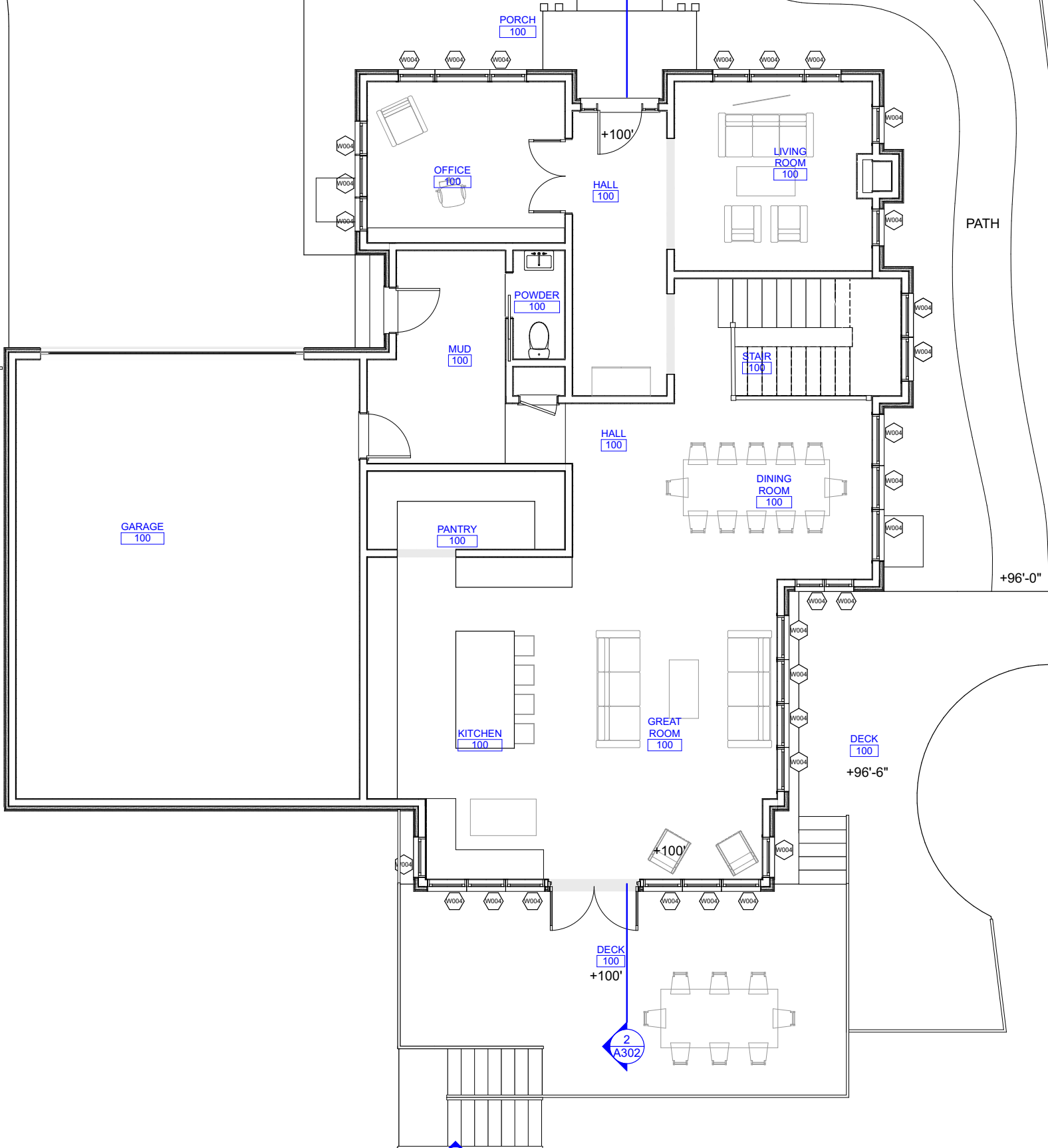


BIMcloud: LABIM25 - BIMcloud Basic for Archicad 25/MORR Tuesday, September 20, 2022 4:35 PM

1
A102

MAIN LEVEL PLAN

SCALE: 1/4" = 1'-0"



LloydArchitects

573 EAST 600 SOUTH
SALT LAKE CITY, UT 84102
ph: 307.760.7948
wb: LLOYD-ARCH.COM

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LLOYD ARCHITECTS - 2022

#PROJECT NAME #

#ADDRESS #
#CITY #
#COUNTY, STATE #
PIN #
FOR: #CLIENT / COMPANY NAME#

SEAL

#PRELIMINARY DESIGN#
NOT FOR CONSTRUCTION

DATE

9/20/22

PROJECT NUMBER

PROJECT #

PROJECT PHASE

- SCHEMATIC DESIGN #####

DRAWING REVISIONS

REV. | NAME | DATE

SHEET TITLE

MAIN LEVEL PLAN

SHEET NUMBER

A102

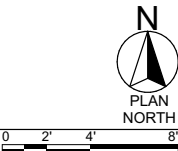
IF THIS SHEET IS LESS THAN 24"X36" IT IS A REDUCED PRINT. SCALE ACCORDINGLY.

BIMcloud: LABIM25 - BIMcloud Basic for Archicad 25/MORR Tuesday, September 20, 2022 4:35 PM

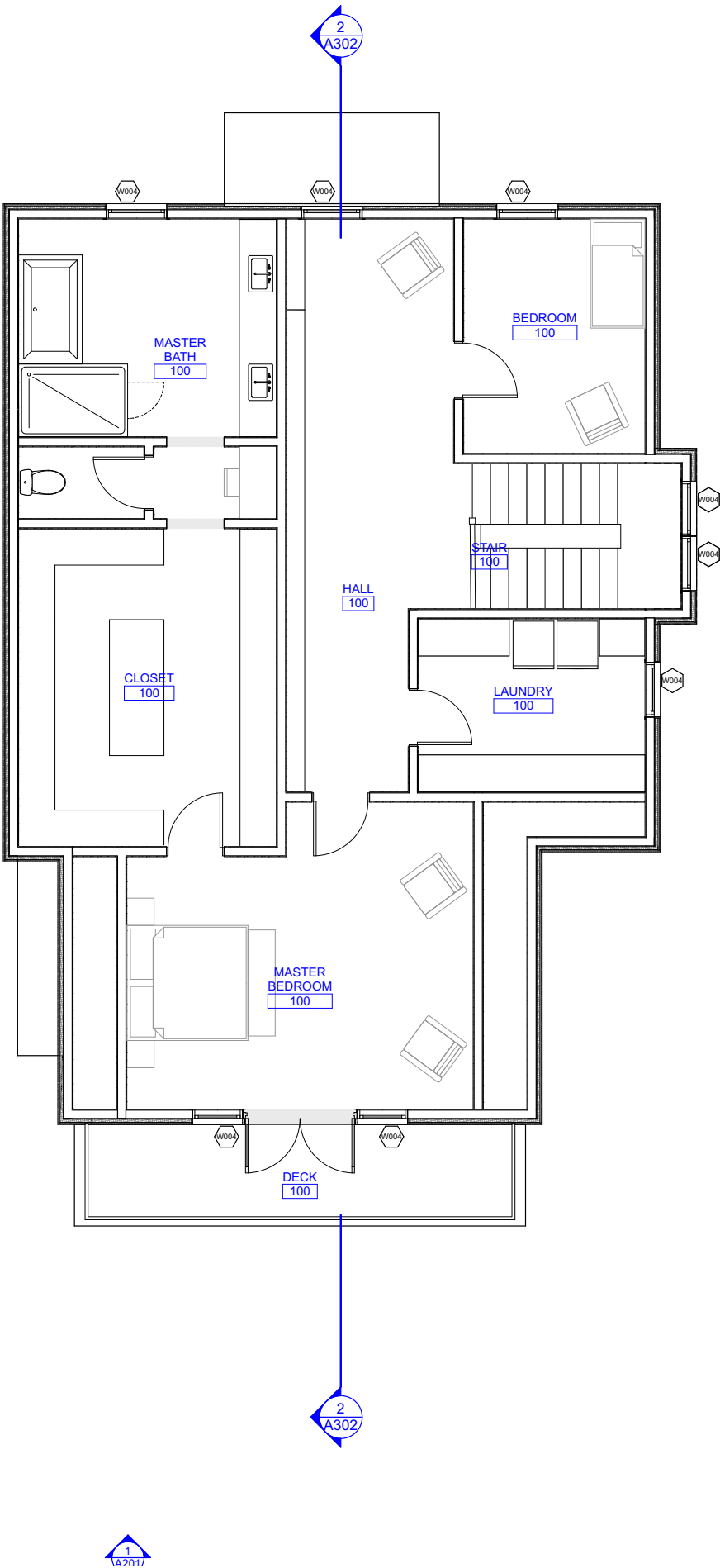
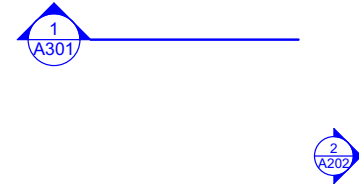
1
A103

UPPER LEVEL PLAN

SCALE: 1/4" = 1'-0"



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#PROJECT NAME #

#ADDRESS #
#CITY #
#COUNTY, STATE #
PIN #
FOR: #CLIENT / COMPANY NAME#



DATE
9/20/22

PROJECT NUMBER
PROJECT #

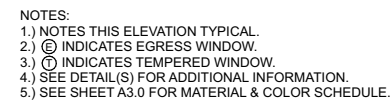
PROJECT PHASE
- SCHEMATIC DESIGN #####
-
-
-

DRAWING REVISIONS		
REV.	NAME	DATE

SHEET TITLE
UPPER LEVEL PLAN

SHEET NUMBER

A103



SCALE: 1/4" = 1'-0"

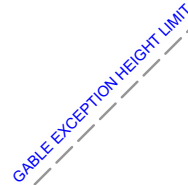


SEE 1/A

SCALE: 1/4" = 1'-0"

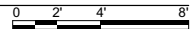
NOTE: VERIFY WITH ARCHITECT FOR FINAL COLOR MATERIAL BOARD.

IF THIS SHEET IS LESS THAN 24"X36" IT IS A REDUCED PRINT. SCALE ACCORDINGLY.

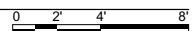


SEE 1/A3.0 FOR TYPICAL ELEVATION NOTES.

SCALE: 1/4" = 1'-0"



SCALE: 1/4" = 1'-0"



SURVEYOR'S CERTIFICATE

I, CHARLES V. KING, do hereby certify that I am a Registered Professional Engineer and Land Surveyor, and that I hold certificate Nos. 1925 & 1929, as prescribed under the laws of the State of Utah. I further certify that by authority of the Owners, I have made a survey of the tract of land shown on this plat and described below, and have subdivided said tract of land into lots and streets, hereafter to be known as **UPLAND TERRACE PLAT "H"** and that same has been correctly surveyed and staked on the ground as shown on this plat.

COURSE	DIST.	BOUNDARY DESCRIPTION	REMARKS
		BEGINNING ON THE EAST SIDE OF 2700 EAST STREET, SAID POINT BEING	
N 0° 00' 30" E	810.07	FEET AND	
S 87° 30' E	33.031	FEET FROM THE WEST & CORNER SEC. 35, T.15,	
		R.1E., S.4.B.1.M., THENCE	
N 0° 00' 30" E	135.275	FEET, THENCE	
EAST	36.958	FEET, THENCE EASTERLY ALONG A 540' RADIUS CURVE TO THE	
		RIGHT	
	113.037	FEET TO A POINT OF REVERSE CURVE THE CENTER OF WHICH	
		BEARS, N.12° E. 230', THENCE EASTERLY ALONG SAID CURVE	
	22.411	FEET, THENCE	
S 87° 6'	334.152	FEET, THENCE EASTERLY ALONG A 160' RADIUS CURVE	
	12.460	FEET, THENCE	
S 2° 56' N	107.558	FEET, THENCE	
S 47° 30' N	110.11	FEET, THENCE	
S 47° 31' N	262.259	FEET, THENCE	
N 57° 30' E	194.826	FEET, THENCE	
N 0° 00' 30" E	180.50	FEET, THENCE	
N 15° N	134.386	FEET, THENCE	
N 87° 30' W	172.58	FEET TO THE POINT OF BEGINNING	

FEB. 1962
DATE



OWNER'S DEDICATION

Know all men by these presents that we, the undersigned owner (s) of the above described tract of land, having caused same to be subdivided into lots and streets to be hereafter known as the

UPLAND TERRACE PLAT "H"

do hereby dedicate for perpetual use of the public all parcels of land shown on this plat as intended for Public use.

In witness whereof we have hereunto set our hands this 24th day of June, A.D., 1962

REORGANIZED CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS

William A. Boyd
WILLIAM A. BOYD
G. LESLIE DE LAPP, TRUSTEE
Samuel R. P. P. P.
SAMUEL R. P. P. P.
H. ELIZABETH P. P. P.
MARKIE C. KING
RICHARDS WOODBURY MORTGAGE CORPORATION
a Utah Corporation
Vice President

ACKNOWLEDGMENT

STATE OF UTAH } S.S.
County of Salt Lake }

On the 24th day of June, A.D., 1962, personally appeared before me, the undersigned Notary Public, in and for said County of Salt Lake in said State of Utah, the signer(s) of the above Owner's dedication, 6 in number, who duly acknowledged to me that they signed it freely and voluntarily and for the uses and purposes therein mentioned.

MY COMMISSION EXPIRES: Sept. 20, 1963
Anna F. Hall
NOTARY PUBLIC
RESIDING IN SALT LAKE COUNTY

UPLAND TERRACE PLAT "H"

A SUBDIVISION IN THE NW 1/4 SEC. 35, T.15, R.1E., RANGE 1 EAST.

SALT LAKE BASE & MERIDIAN

RECORDED #1883447

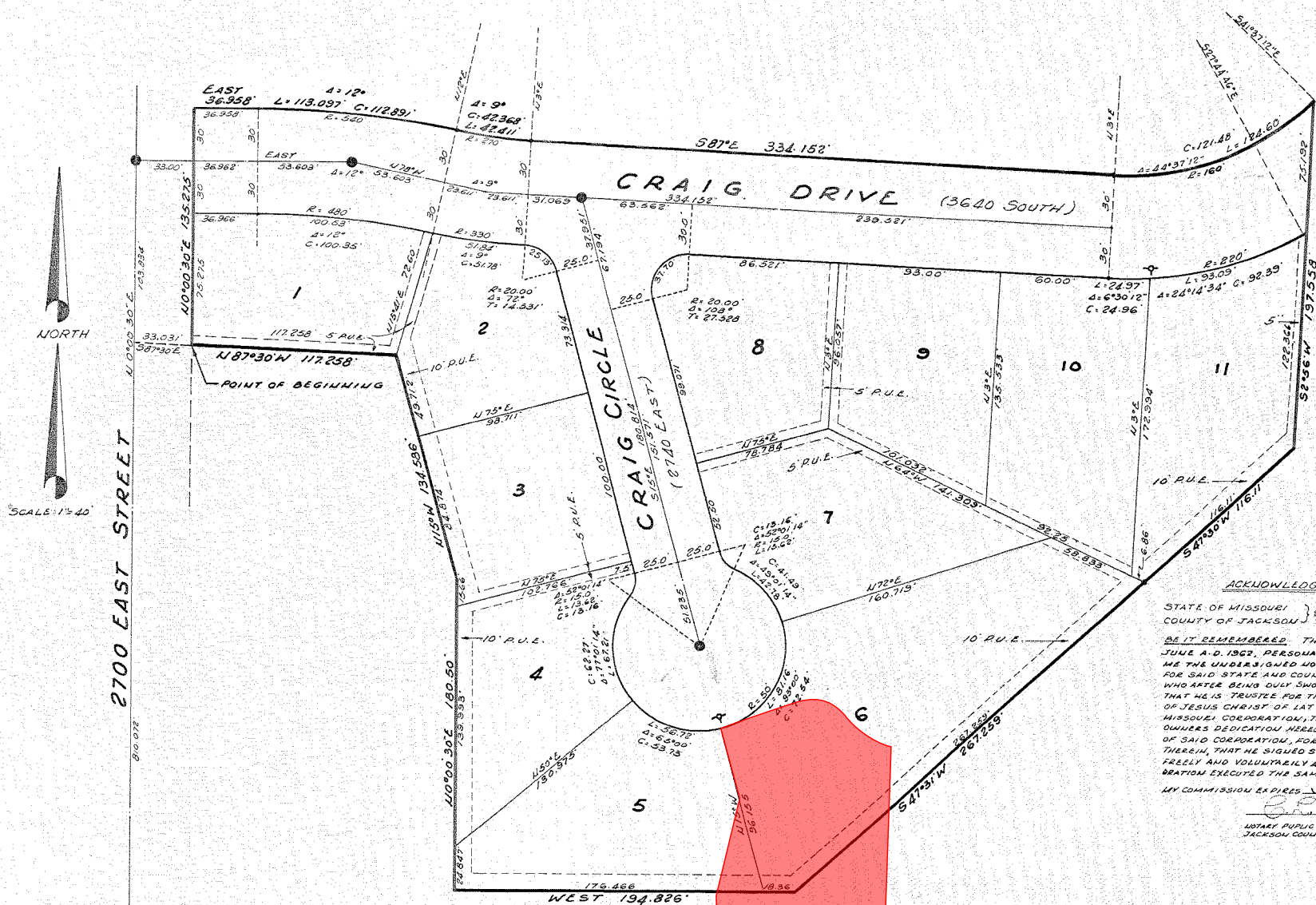
STATE OF UTAH, COUNTY OF SALT LAKE, RECORDED AND FILED AT THE REQUEST OF

COON AND KING
DATE Nov. 23, 1962 TIME 3:07 P.M. BOOK 7 PAGE 25

1855
FEE \$
SALT LAKE COUNTY RECORDER

#826

SALT LAKE BLUE IMPERIAL



ACKNOWLEDGMENT

STATE OF MISSOURI } S.S.
COUNTY OF JACKSON }

BE IT REMEMBERED THAT ON THIS 24th DAY OF JUNE A.D. 1962, PERSONALLY APPEARED BEFORE ME THE UNDERSIGNED NOTARY PUBLIC IN AND FOR SAID STATE AND COUNTY G. LESLIE DE LAPP WHO AFTER BEING DULY SWORN ACKNOWLEDGED TO ME THAT HE IS TRUSTEE FOR THE REORGANIZED CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, A MISSOURI CORPORATION, THAT HE SIGNED THE OWNERS DEDICATION HEREON, FOR AND IN BEHALF OF SAID CORPORATION, FOR THE PURPOSES MENTIONED THEREIN, THAT HE SIGNED SAID INSTRUMENT FREELY AND VOLUNTARILY AND THAT SAID CORPORATION EXECUTED THE SAME.

MY COMMISSION EXPIRES Sept. 20, 1965

George P. Luhn
NOTARY PUBLIC RESIDING IN JACKSON COUNTY, MISSOURI

ACKNOWLEDGMENT

STATE OF UTAH, COUNTY OF SALT LAKE
On the 21st day of November, A.D. 1962, personally appeared before me Orin R. Woodbury who being by me duly sworn did say, that he, the said Orin R. Woodbury is the Vice President of RICHARDS WOODBURY MORTGAGE CORPORATION, a Utah Corporation, and that the within and foregoing instrument was signed in behalf of said Corporation by authority of a resolution of its board of directors and said Orin R. Woodbury duly acknowledged to me that said Corporation executed the same.

DEC. 1, 1962
My Commission Expires

George P. Luhn
Notary Public Residing in Salt Lake Co.

SALT LAKE CO. BOARD OF HEALTH APPROVAL
APPROVED THIS 21 DAY OF AUGUST A.D. 1962

Ant. Edward Jackson
DIRECTOR - S. L. CO. BOARD OF HEALTH

COUNTY PLANNING COMMISSION APPROVAL
APPROVED THIS 13th DAY OF MARCH A.D. 1962 BY THE SALT LAKE COUNTY PLANNING COMMISSION.

William C. Macleach
ACTING CHAIRMAN, SALT LAKE CO. PLANNING COMM.

MONUMENTS TO BE SET
P.U.E.: PUBLIC UTILITY EASEMENT
Fire Hydrants to be set.

COUNTY SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE HAD THIS PLAT, AND SAID TRACT, AS STAKED, EXAMINED BY THIS OFFICE, AND IT IS CORRECT AND IN ACCORDANCE WITH INFORMATION ON FILE IN THIS OFFICE.

DATE Sept. 11th 1962.
Proctor Bodin
SALT LAKE COUNTY SURVEYOR

APPROVAL AS TO FORM

APPROVED AS TO FORM THIS 17th DAY OF October A.D. 1962

SALT LAKE COUNTY ATTORNEY

COUNTY COMMISSION APPROVAL & ACCEPTANCE

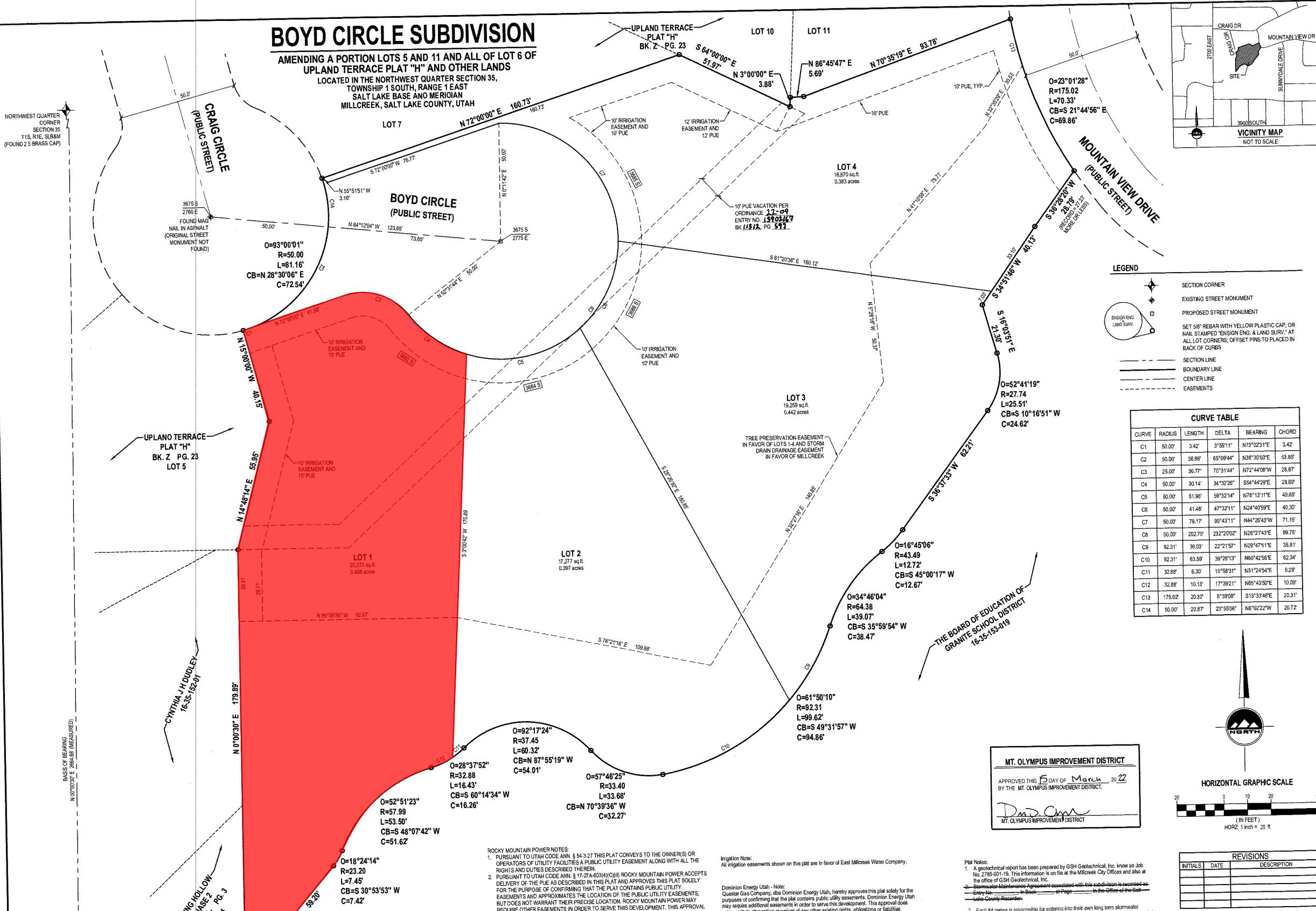
PRESENTED TO THE BOARD OF SALT LAKE COUNTY COMMISSIONERS THIS 17th DAY OF NOVEMBER A.D. 1962 AT WHICH TIME THIS SUBDIVISION WAS APPROVED AND ACCEPTED.

ATTEST: *W. L. Luhn*
SALT LAKE COUNTY CLERK

William C. Macleach
CHAIRMAN, BO. OF SALT LAKE CO. COMM.

BOYD CIRCLE SUBDIVISION

AMENDING A PORTION LOTS 5 AND 11 AND ALL OF LOT 6 OF
UPLAND TERRACE PLAT "H" AND OTHER LANDS
LOCATED IN THE NORTHWEST QUARTER SECTION 35,
TOWNSHIP 1 SOUTH, RANGE 1 EAST
SALT LAKE BASE AND MERIDIAN
MILLCREEK, SALT LAKE COUNTY, UTAH



SURVEYOR'S CERTIFICATE
I, PATRICK M. HARRIS, do hereby certify that I am a Professional Land Surveyor in the State of Utah and that I hold License No. 28682. In accordance with Title 56, Chapter 22, of the Professional Engineers and Land Surveyors Act, I further certify that by authority of the Owner, I have completed a survey of the property described in this subdivision plat in accordance with Section 17-23-17 and have verified all measurements; that the reference monuments shown on this plat are located as indicated and are sufficient to accurately establish the lateral boundaries of the herein described tract of real property; and has been drawn correctly to the designated scale and is a true and correct representation of the herein described lands included in said subdivision, based upon data compiled from records of the county recorder's office. I further certify that all lots show frontage width and area requirements of the applicable zoning ordinance.

BOUNDARY DESCRIPTION
Amending all of Lot 6 and a portion of Lot 5 of the Upland Terrace Plat "H" Subdivision, recorded November 23, 1962 as Entry No. 1883447 in Book Z at Page 25 in the Office of the Salt Lake County Recorder, and a portion of the tract described in that Special Warranty Deed, recorded May 31, 1965 as Entry No. 6001090 in Book 7160 at Page 274. Said parcel being located in the Northwest Quarter of Section 35 Township 1 South, Range 1 East, Salt Lake Base and Meridian, and is more particularly described as follows:
Beginning at a point on the Eastern Boundary Line of Spring Hollow Phase 2 Subdivision, recorded January 13, 1994 as Entry No. 3862752 in Book 84-1 at Page 3 in the Office of the Salt Lake County Recorder, said point being North 00°00'00" East (Record North) 313.23 feet along the section line and East 332.68 feet (Record North 332.725 feet) from the West Quarter Corner of Section 35, Township 1 South, Range 1 East, Salt Lake Base and Meridian; and running
thence along said Eastern Boundary Line of Spring Hollow Phase 2 Subdivision and its extension North 00°00'00" East 179.89 feet to the Southern Boundary Line of the Upland Terrace Plat "H" Subdivision;
thence North 14°48'14" East 55.95 feet to the Western Boundary Line of Lot 6 of said Upland Terrace Plat "H" Subdivision;
thence along the Western and Northern Boundary Line of said Lot 6 the following four (4) courses:
(1) North 15°00'00" West 40.15 feet;
(2) Northeastly 61.16 feet along the arc of a 50.00 foot radius curve to the left (center bears North 14°59'54" West and the chord bears North 28°30'00" East 21.30 feet);
(3) North 72°00'00" East 180.73 feet;
(4) South 64°00'00" East 51.97 feet to the Southeast Corner of Lot 10 of the Upland Terrace Plat "H" Subdivision;
thence North 03°00'00" East 3.88 feet along the Eastern Boundary Line of said Lot 10 to an existing fence;
thence along said existing fence line the following two (2) courses:
(1) North 86°45'47" East 5.69 feet;
(2) North 70°35'19" East 93.78 feet to the Western Boundary Line of Lot 11 of the Upland Terrace Plat "H" Subdivision;
thence North 03°00'00" East 3.88 feet along the Eastern Boundary Line of said Lot 11 to an existing fence;
thence South 21°44'58" East 69.86 feet with a central angle of 23°01'28" along said Western Right-of-Way Line to the Northern side of an existing chain link fence;
thence along said existing chain link fence the following fourteen (14) courses:
(1) South 36°28'20" West 28.79 feet (Record 27.23 feet More or Less);
(2) South 34°51'46" West 40.13 feet;
(3) South 18°03'35" East 21.30 feet;
(4) Southeastly 25.51 feet along the arc of a 27.74 foot radius curve to the right (center bears South 73°56'11" West and the chord bears South 10°16'51" West 62.21 feet);
(5) South 36°37'33" West 62.21 feet;
(6) Southeastly 12.72 feet along the arc of a 43.45 foot radius curve to the right (center bears North 53°22'16" West and the chord bears South 49°31'57" West 54.81 feet with a central angle of 16°45'09");
(7) Southeastly 39.07 feet along the arc of a 64.38 foot radius curve to the left (center bears South 36°37'04" East and the chord bears South 35°59'54" West 38.47 feet with a central angle of 34°46'04");
(8) Southeastly 99.62 feet along the arc of a 52.31 foot radius curve to the right (center bears North 71°23'08" West and the chord bears South 49°31'57" West 54.81 feet with a central angle of 61°50'10");
(9) Northwestly 53.88 feet along the arc of a 33.40 foot radius curve to the right (center bears North 09°32'49" West and the chord bears North 70°35'38" West 32.27 feet with a central angle of 57°46'25");
(10) Northwestly 60.32 feet along the arc of a 37.45 foot radius curve to the left (center bears South 46°13'23" West and the chord bears North 87°55'19" West 54.81 feet with a central angle of 92°17'24");
(11) Southeastly 16.43 feet along the arc of a 32.88 foot radius curve to the right (center bears North 44°04'22" West and the chord bears South 60°14'34" West 16.26 feet with a central angle of 28°37'52");
(12) Southeastly 53.50 feet along the arc of a 57.99 foot radius curve to the left (center bears South 15°26'36" East and the chord bears South 48°07'42" West 51.62 feet with a central angle of 52°51'23");
(13) Southeastly 7.45 feet along the arc of a 23.20 foot radius curve to the right (center bears North 68°18'14" West and the chord bears South 30°53'53" West 7.42 feet with a central angle of 18°24'14");
(14) South 40°05'51" West 58.20 feet to the point of beginning.

Contains 82,804 Square Feet or 1.901 Acres and 4 Lots

OWNER'S DEDICATION
I, THE UNDERSIGNED OWNER OF THE HEREIN DESCRIBED TRACT OF LAND, DO HEREBY SET APART AND SUBDIVIDE THE SAME INTO LOTS AND STREETS AS SHOWN HEREON AND NAME SAID TRACT:

BOYD CIRCLE SUBDIVISION
AND DO HEREBY DEDICATE THE SAME TO BE USED AS PUBLIC USE ALL THOSE PARTS AND PORTIONS OF SAID TRACT OF LAND DESIGNATED AS STREETS THE SAME TO BE USED AS PUBLIC THROUGHFARES FOREVER, AND HEREBY GRANT AND DEDICATE A PERPETUAL RIGHT AND EASEMENT OVER, UPON AND UNDER THE LANDS DESIGNATED ON THE PLAT AS PUBLIC UTILITY, STORM WATER DETENTION PONDS, DRAINAGE AND CANAL MAINTENANCE EASEMENTS, THE SAME TO BE USED FOR THE INSTALLATION, MAINTENANCE, AND OPERATION OF PUBLIC UTILITY SERVICE LINES, STORM DRAINAGE FACILITIES, IRRIGATION CANALS OR FOR THE PERPETUAL PRESERVATION OF WATER DRAINAGE CHANNELS IN THEIR NATURAL STATE WHICHEVER IS APPLICABLE AS MAY BE AUTHORIZED BY THE GOVERNING AUTHORITY WITH NO BUILDINGS OR STRUCTURES BEING ERRECTED WITHIN SUCH.

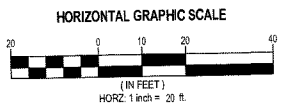
SIGNED THIS 2 DAY OF March, 2022

Rob Reynolds
Name: RMT Investments, LLC
Title: Manager

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT
STATE OF UTAH County of Salt Lake
On the 2 day of March, A.D., 2022, before me, Notary Public, in and for said County of Utah, who after being duly sworn, acknowledged to me that Rob Reynolds is the Manager of RMT Investments, LLC, a Limited Liability Company, and that He/She signed the Owner's Dedication freely and voluntarily for and in behalf of said Limited Liability Company for the purposes therein mentioned and acknowledged to me that said Limited Liability Company executed the same.

MY COMMISSION EXPIRES: 12-12-24
NOTARY PUBLIC

CURVE TABLE					
CURVE	RADIUS	LENGTH	DELTA	BEARING	CHORD
C1	50.00'	3.42'	3°55'11"	N73°02'31"E	3.42'
C2	50.00'	56.86'	65°09'44"	N38°30'03"E	53.85'
C3	25.00'	30.77'	70°31'44"	N72°44'08"W	28.87'
C4	50.00'	30.14'	34°32'26"	S44°42'29"E	28.69'
C5	50.00'	51.96'	59°32'14"	N78°13'11"E	48.65'
C6	50.00'	41.48'	47°32'11"	N24°40'59"E	40.30'
C7	50.00'	78.17'	90°43'11"	N44°26'43"W	71.15'
C8	50.00'	202.79'	232°22'02"	N28°21'43"E	89.75'
C9	92.31'	36.03'	22°21'57"	N29°47'51"E	35.81'
C10	92.31'	63.59'	39°28'13"	N60°42'56"E	62.34'
C11	32.88'	6.30'	10°58'31"	N51°24'54"E	6.29'
C12	32.88'	10.13'	17°39'21"	N66°43'50"E	10.09'
C13	175.02'	20.32'	6°39'09"	S19°33'46"E	20.31'
C14	50.00'	20.87'	23°55'08"	N6°02'22"W	20.72'



REVISIONS		
INITIALS	DATE	DESCRIPTION

MT. OLYMPUS IMPROVEMENT DISTRICT
APPROVED THIS 5 DAY OF March, 2022
BY THE MT. OLYMPUS IMPROVEMENT DISTRICT.

Plat Notes:
1. A geotechnical report has been prepared by GSH Geotechnical, Inc. know as Job No. 2785-001-19. This information is on file at the Millcreek City Offices and also at the office of GSH Geotechnical, Inc.
2. Stormwater Maintenance Agreement associated with this subdivision is recorded as Entry No. 13415564 in Book 1341 at Page 1 in the Office of the Salt Lake County Recorder.

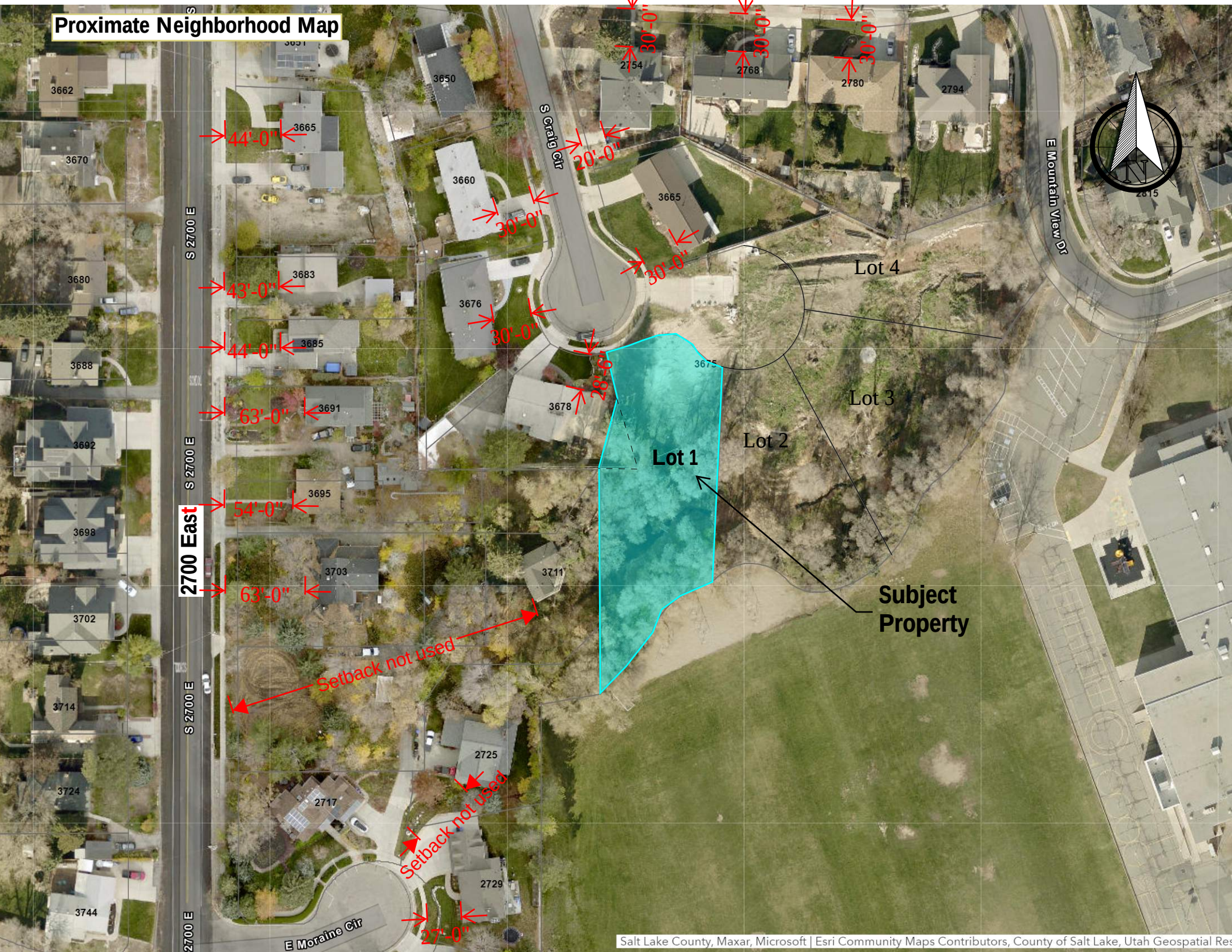
Rocky Mountain Power Notes:
1. PURSUANT TO UTAH CODE ANN. § 54-3-27 THIS PLAT CONVEYS TO THE OWNER(S) OR OPERATORS OF UTILITY FACILITIES A PUBLIC UTILITY EASEMENT ALONG WITH ALL THE RIGHTS AND DUTIES DESCRIBED THEREIN.
2. PURSUANT TO UTAH CODE ANN. § 17-27-A-603(4)(C)(II) ROCKY MOUNTAIN POWER ACCEPTS DELIVERY OF THE PUE AS DESCRIBED IN THIS PLAT AND APPROVES THIS PLAT SOLELY FOR THE PURPOSE OF CONFIRMING THAT THE PLAT CONTAINS PUBLIC UTILITY EASEMENTS AND APPROXIMATES THE LOCATION OF THE PUBLIC UTILITY EASEMENTS, BUT DOES NOT WARRANT THEIR PRECISE LOCATION. ROCKY MOUNTAIN POWER MAY REQUIRE ADDITIONAL EASEMENTS IN ORDER TO SERVE THIS DEVELOPMENT. THIS APPROVAL DOES NOT AFFECT ANY RIGHT THAT ROCKY MOUNTAIN POWER HAS UNDER:
2.1. A RECORDED EASEMENT OR RIGHT-OF-WAY
2.2. THE LAW APPLICABLE TO PRESCRIPTIVE RIGHTS
2.3. TITLE 54, CHAPTER 8A, DAMAGE TO UNDERGROUND UTILITY FACILITIES OR
2.4. ANY OTHER PROVISION OF LAW.

Irrigation Note:
All irrigation easements shown on this plat are in favor of East Millcreek Water Company.

Dominion Energy Utah - Note:
Quasler Gas Company, dba Dominion Energy Utah, hereby approves this plat solely for the purposes of confirming that the plat contains public utility easements. Dominion Energy Utah may require additional easements in order to serve this development. This approval does not constitute abrogation or waiver of any other existing rights, obligations or liabilities provided by law or equity. This approval does not constitute acceptance, approval or acknowledgment of any terms contained in the plat, including those set in the Owners Dedication or in the Notes, and does not constitute a guarantee of particular terms or conditions of natural gas service. For further information please contact Dominion Energy Utah's Right-of-Way Department at 800-365-8532.

PUBLIC UTILITY APPROVAL CABLE: <i>Drift</i> DATE: 2-25-22 COMCAST: <i>Drift</i> DATE: 2-25-22 ROCKY MTN POWER: <i>Drift</i> DATE: 2-25-22 DOMINION ENERGY: <i>Drift</i> DATE: 2-25-22	CHECKED FOR ZONING COMPLIANCE ZONE: R-1-B LOT WIDTH: 100.00' FRONT YARD: 25.00' SIDE YARD: 10.00' REAR YARD: 30.00' DATE: 3/16/2022 SIGNATURE: <i>Drift</i>	MILLCREEK ENGINEERING APPROVED THIS 16 DAY OF MARCH, 2022 BY THE MILLCREEK ENGINEERING SIGNATURE: <i>Drift</i> DATE: 3/16/2022	SALT LAKE COUNTY HEALTH DEPARTMENT APPROVED THIS 10 DAY OF March, 2022 BY THE SALT LAKE COUNTY HEALTH DEPARTMENT SIGNATURE: <i>Drift</i> DATE: 3/15/22	MILLCREEK PLANNING AND ZONING DEPARTMENT APPROVED THIS 16 DAY OF March, 2022 BY THE MILLCREEK PLANNING AND ZONING DEPARTMENT SIGNATURE: <i>Drift</i> DATE: 3/16/2022	MILLCREEK PLANNING COMMISSION APPROVED THIS 16 DAY OF March, 2022 BY THE MILLCREEK PLANNING COMMISSION SIGNATURE: <i>Drift</i> DATE: 3/16/2022	APPROVAL AS TO FORM APPROVED THIS 16 DAY OF March, 2022 BY THE MILLCREEK CITY ATTORNEY SIGNATURE: <i>Drift</i> DATE: 3/16/2022	CITY OF MILLCREEK PRESENTED TO THE MAYOR AND MILLCREEK COUNCIL THIS 17 DAY OF March, A.D. 2022 WHICH TIME THIS SUBDIVISION WAS APPROVED AND ACCEPTED. SIGNATURE: <i>Drift</i> DATE: 3/16/2022 MAYOR ATTEST: CITY RECORDER	BOYD CIRCLE SUBDIVISION AMENDING A PORTION LOTS 5 AND 11 AND ALL OF LOT 6 OF UPLAND TERRACE PLAT "H" AND OTHER LANDS LOCATED IN THE NORTHWEST QUARTER SECTION 35, TOWNSHIP 1 SOUTH, RANGE 1 EAST SALT LAKE BASE AND MERIDIAN MILLCREEK, SALT LAKE COUNTY, UTAH RECORDED # 13415564 STATE OF UTAH, COUNTY OF SALT LAKE, RECORDED AND FILED AT THE REQUEST OF: RMT Investments, LLC DATE: 3/21/22 TIME: 3:07 PM BOOK: 2022P PAGE: 0284 FEES: \$58.00 DEPUTY SALT LAKE COUNTY RECORDER
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Proximate Neighborhood Map



Address	Zone	Lot Size (sf)	Lot Shape	Unusual or Difficult Terrain	Drainage Issues	Front Yard Setback
2780 S. Craig Drive	R-1-8	13,068	Rectangular - Traditional Frontage	Flat	Not apparent	30 feet
2768 S. Craig Drive	R-1-8	10,890	Rectangular - Traditional Frontage	Flat	Not apparent	30 feet
2754 S. Craig Drive	R-1-8	10,018	Square – Corner lot	Flat	Not apparent	30 feet (north) 20 feet (west)
3665 S. Craig Circle	R-1-8	12,633	Trapezoid - Cul-de-sac	Flat	Not apparent	30 feet
3685 S. Craig Circle (Lot 4)	R-1-8	16,670	Trapezoid - Cul-de-sac	Rear yard only	Rear yard only	No structure
3686 S. Craig Circle (Lot 3)	R-1-8	19,259	Pie shape - Cul-de-sac	Rear yard only	Rear yard only	No structure
3684 S. Craig Circle (Lot 2)	R-1-8	17,277	Pie shape - Cul-de-sac	Rear yard only	Rear yard only	No structure
3682 S. Craig Circle (Lot 1)	R-1-8	20,373	Rectangular - Cul-de-sac	Rear yard only	Rear yard only	No structure
3678 S. Craig Circle	R-1-8	10,385	Triangular - Cul-de-sac	Flat	Not apparent	28 feet
3676 S. Craig Circle	R-1-8	10,890	Trapezoid - Traditional Frontage	Flat	Not apparent	30 feet
3660 S. Craig Circle	R-1-8	9,583	Square - Traditional Frontage	Flat	Not apparent	30 feet
3665 S. 2700 E.	R-1-8	17,860	Trapezoid - Traditional Frontage	Flat	Not apparent	44 feet
3683 S 2700 E.	R-1-8	7,405	Rectangular - Traditional Frontage	Flat	Not apparent	43 feet
3685 S. 2700 E.	R-1-8	8,276	Rectangular - Traditional Frontage	Flat	Not apparent	44 feet
3691 S. 2700 E.	R-1-8	14,375	Irregular - Traditional Frontage	Flat	Not apparent	63 feet
3695 S. 2700 E.	R-1-8	8,712	Irregular - Very Narrow Frontage	Flat	Not apparent	54 feet
3703 S. 2700 E.	R-1-8	13,068	Rectangular - Traditional Frontage	Flat	Not apparent	63 feet
3711 S. 2700 E.	R-1-8	30,926	Irregular - Traditional Frontage	Rear yard only	Rear yard only	Undetermined
2725 E Moraine Circle	R-1-8	14,810	Irregular - No Frontage	Rear yard only	Rear yard only	Undetermined
2729 E Moraine Circle	R-1-8	12,197	Pie shape - Cul-de-sac	Flat	Not apparent	27 feet



October 10, 2022

To: Millcreek Planning and Zoning

Subject: RC-22-003 – RCOZ C Special Exception for a Residence
3682 East Craig Circle.

At the October 6, 2022 meeting of the East Millcreek Community Council (EMCCC), the subject application was presented by Mr. Sanderson and the applicant Mr. Lloyd. Questions/concerns were asked and addressed by attendees and council members.

The applicant is asking for an exception to the front yard setback from 25 feet as required by the R-1-8 zone.

Mr. Sanderson did a very professional job of putting the information together in the Memorandum to the Council. Per the RCOZ ordinance, the application must show specific provisions from which the applicant seeks exceptions.

EMCCC DOES NOT RECOMMEND that the special exception be granted. The applicant's situation is not "unusual or extraordinary".

If the Planning Commission grants this exception; and we do not recommend that for the reasons in this letter, it would cause a precedent to be set, potentially causing a domino effect in Millcreek.

As to the findings, per [19.71.050 Option C Special Exception; Planning Commission Review, A.2.](#)

2. Detailed information and explanation establishing that:

- a. 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.
EMCCC believes the proposed residence will NOT be in harmony as it relates to the front yard setback; the other residences in the circle and residences in the neighborhood have the required setbacks.
- b. 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.
EMCCC believes the proposed residence will NOT be compatible with the homes in the proximate neighborhood if allowed the front yard setback.



October 10, 2022

- c. 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
EMCCC believes the proposed residence will affect the general welfare of the neighborhood. One resident who attended the meeting expressed concern on the exception and was **opposed** to the proposed exception.
 - d. 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).
Per Planning Staff analysis, no point of the home will exceed 40 feet above original grade.
 - e. The front yard setback will be at least twenty-five feet.
NO. Per staff report, the applicant supplied a site plan that indicates the front yard setback is 18 feet, as measured from the front property line.
3. Additional factors that the planning commission may consider in deciding whether to grant an exception under this Part include:
- a. Unusual lot shape
EMCCC notes that the lot is not unusual or extraordinary; it is typical in many residential areas of circles and semi-circle streets all over the city and the county.
 - b. Unusual or difficult terrain
EMCCC notes, and per staff report, that overall the parcel is considerably flat.
 - c. Drainage problems
EMCCC notes applicant states a large drainage easement contributes to a reduced buildable area in comparison to adjacent lots. No drainage issues to impact of building to the building envelope as noted in staff report.
 - d. Situations that appear not to be clearly addressed by the provisions of Options A or B.
EMCCC notes that no other situations are addressed. The buildable area (Staff report 2.b.) is 60 feet deep and 60 feet wide; large enough for a generic or custom home. The deck on the back could be cantilevered over the back area. The Planning staff provided several alternatives to the layout on the property without changing the foot print to maintain a 25 foot front yard setback.

///s///

LeeAnn Hansen,
Chair, Land Use, EMCCC