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4 **PLANNING COMMISSION MINUTES OF MEETING**

5 **Wednesday, October 9, 2013**

6 **7:00 p.m.**
7

8 A quorum being present at Centerville City Hall, 250 North Main Street, Centerville,
9 Utah. The meeting of the Centerville City Planning Commission was called to order at 7:00 p.m.
10

11 **MEMBERS PRESENT**

12 David Hirschi

13 Kevin Merrill, Chair

14 Scott Kjar

15 Debra Randall

16 Steven Markham
17

18 **MEMBERS ABSENT**

19 Tamilyn Fillmore

20 Brian Holman
21

22 **STAFF PRESENT**

23 Corvin Snyder, Community Development Director

24 Brandon Toponce, Assistant Planner

25 Lisa Romney, City Attorney

26 Kathy Streadbeck, Recording Secretary
27

28 **VISITORS**

29 Patrick Scott, Brighton Homes
30

31 **PLEDGE OF ALLEGIANCE**
32

33 **OPENING COMMENT/LEGISLATIVE PRAYER**

Commissioner Markham

34
35 **MINUTES REVIEW AND APPROVAL**
36

37 Minutes of the Planning Commission meeting held September 25, 2013 were reviewed
38 and amended. Chair Merrill made a **motion** to approve the minutes as amended. The motion was
39 seconded by Commissioner Markham and passed by unanimous vote (4-0). Commissioner Kjar
40 abstained from voting. He was not present at this meeting.
41

PUBLIC HEARING | BRIGHTON HOMES RESIDENTIAL LOT | 530 E. 100 S.
Consideration of a final site plan for an un-platted residential building lot, located at 530
East 100 South, for the purpose of constructing a new dwelling, in the R-L Zone. Brighton
Homes Utah, LLC, Applicant

Brandon Toponce, Assistant Planner, reported the applicant desires to build a single-family dwelling on a piece of property that has never had a residential dwelling located upon it. Therefore, the applicant is required to go through the site plan approval process. The applicant is now ready for final site plan approval. The applicant has complied with the conditions set during the conceptual site plan approval process. All utility provider sheets have been received and all easements and drainage issues have been reviewed and approved by the City Engineer. The easements must still be accepted by the City Council prior to issuance of the building permit. The applicant will be required to bond for improvements as required. In addition, the applicant will need to sign an extension agreement with regard to sidewalk construction.

Lisa Romney, City Attorney, explained the sidewalk extension agreement is an agreement to defer construction of the sidewalk until there is a demand for that sidewalk. This would be an agreement between the applicant and the City according to City ordinances. The agreement will be required to be recorded against the property.

Chair Merrill opened the public hearing. There was no comment; he closed the public hearing.

Commissioner Randall made a **motion** for the Planning Commission to approve the final site plan for the Brighton Homes Utah LLC residential lot, located at 530 East 100 South, subject to the following conditions:

Conditions:

1. All professional service fees and development fees shall be paid.
2. A bond shall be posted for any public improvements.
3. All utility easements and legal descriptions shall be reviewed and approved by the City Engineer prior to City acceptance by the City Council, and recording at the Davis County Recorder's Office. This recording shall take place prior to the issuance of a building permit.
4. No construction shall take place on the lot prior to the issuance of a building permit.
5. An extension agreement regarding sidewalk construction shall be signed by the property owner and entered into with the City, if deferral of improvements is deemed acceptable to the City. Such agreement shall be recorded against the property prior to

issuance of building permit. Developer shall provide City with current title report to review for recording purposes.

Reasons for Action (findings):

1. The applicant submitted a full application regarding a final site plan [Section 12-21-110(e)].
2. The final site plan conformed to the conceptual acceptance criteria [Section 12-21-110(f)(1)].
3. All development standards have been satisfied in regard to development within the R-L Zone [Table 12-32-1].

The motion was seconded by Commissioner Hirschi and passed by unanimous roll-call vote (5-0).

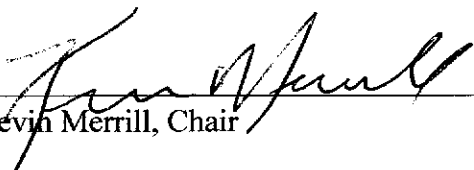
TRAINING FOR COMMISSIONERS

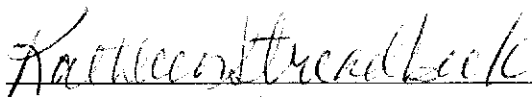
Lisa Romney, City Attorney, used this time to train the Commission on non-conforming uses, variances, and special exceptions. Ms. Romney explained the definition of each item, explained how each is used, the rules for each and how each item is reviewed and approved by the City/Planning Commission (see attached powerpoint presentation).

COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

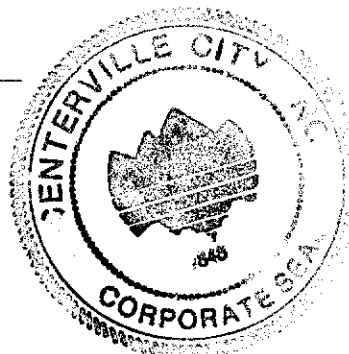
1. The next Planning Commission meeting will be Wednesday, October 23, 2013.
2. Upcoming Agenda Items
 - West Centerville Neighborhood Plan Amendment Process

The meeting was adjourned at 8:23 p.m.


Kevin Merrill, Chair


Kathleen Streadbeck, Recording Secretary

10-23-13
Date Approved



Nonconforming Uses, Special Exceptions and Variances

PLANNING COMMISSION TRAINING
BY CITY ATTORNEY
OCTOBER 9, 2013

Definition of Noncomplying Structure

- A structure that legally existed before its current zoning designation; and
- Because of subsequent zoning ordinance changes, does not conform to the setback, height restrictions, or other applicable requirements of the zoning regulations (excluding those regulations which govern the use of land)

Definition of Nonconforming Use

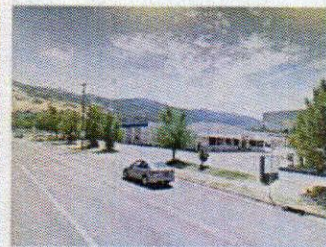
- A use of land that legally existed before its current zoning designation
- Has been maintained continuously since the time the zoning ordinance governing the land changed; and
- Because of subsequent zoning ordinance changes, does not conform to the regulations that now govern the use of land

Noncomplying Structure

Structure originally built to meet zoning ordinance front yard setback requirement

Zoning ordinance changed to require buildings to be built closer to the street

Structure became noncomplying when zoning ordinance changed

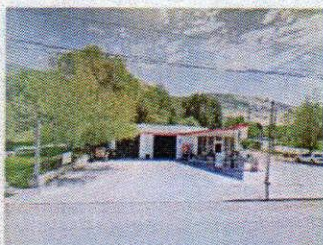


Nonconforming Use of Land

Property originally zoned to allow gas stations and car repair on Main Street

Property rezoned to Commercial-Medium (C-M) which does not allow gas stations

Use of land became nonconforming when ordinance regulations changed



Right to Continue

- Nonconforming uses and noncomplying structures may be continued by the current or future property owner
- Nonconforming rights run with the land
- If use or structure is illegal, rather than nonconforming or noncomplying, property owner has no rights to existence or continuance (unless brought into compliance or ordinances change)



Exceptions for Deterioration

- City may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if:
- The structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within 6 months after written notice from the city; or
- The property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use

Rules of Expansion

- In general, a nonconforming use or structure can be continued only to the extent it was lawfully created, and cannot be expanded (unless otherwise permitted by ordinance)
- Nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension
- Noncomplying structure may be enlarged so long as expansion does not increase the nonconformity (as approved by the Board of Adjustment)

Rules of Abandonment

- Abandonment may be presumed to have occurred if:
- A majority of the primary structure associated with the nonconforming use has been voluntarily demolished;
- The use has been discontinued for a minimum of one year; or
- A less intensive use has replaced the original nonconforming use

Rules of Reconstruction

- City cannot prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity (unless the structure or use has been abandoned)
- Must start the reconstruction within 6 months and diligently pursue to completion

Abandonment of Nonconforming Use of Land

Property originally zoned for a single-family residential use on Main Street

Property converted to Commercial-Medium (C-M) which does not allow residential use

Use of land becomes nonconforming when ordinance regulating it changes

Right is considered lost if use is abandoned for more than one year

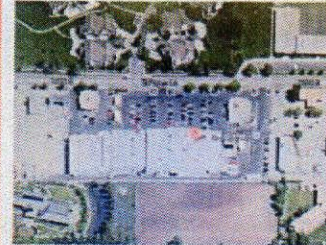


Definition of Special Exception

- An activity or use incidental to or in addition to a principal use permitted in a zoning district or an adjustment to a fixed dimension standard permitted as an exception to the requirements of the zoning ordinance
- An exception expressly permitted by ordinance based on objective criteria

Special Exception

Parking modification granted for reduced number of parking stalls.



Ordinance Permitted Special Exceptions

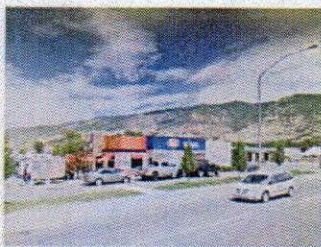
- A temporary building for residential, commercial or industrial use for up to one year when the building is incidental to a permitted use
- Relocation of a nonconforming building or structure, or a building or structure occupied by a nonconforming use, on the same lot or parcel
- Where otherwise authorized by zoning code

Jurisdiction for Special Exceptions

- Planning Commission is authorized to grant special exceptions as provided in Section 12-21-120
- Special exceptions can be revoked

Special Exception

Landscaping required for reduced landscaping around building.



Criteria for Special Exceptions

- Must be sufficient evidence to establish that the proposed special exception
- Will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity
- Will not create unreasonable traffic hazards; and
- Is located on a lot or parcel of sufficient size to accommodate the special exception

Definition of Variance

- A waiver or modification of the requirements of a land use ordinance as applied to a specific parcel or property
- A modification granted by the Board of Adjustment to a zoning requirement for height, bulk, area, width, setback, separation, or other numerical or quantitative requirement for a building or structure or other site improvement as set forth in the Zoning Code

Criteria for Variance

- Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance;
- There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone
- The variance will not substantially affect the general plan and will not be contrary to the public interest; and
- The spirit of the land use ordinance is observed and substantial justice done

Variance

Waiver of front yard setback as applied to specific parcel



Other Restrictions on Variances

- In determining unreasonable hardship, the hardship must be located on or associated with the property
- The hardship must be related to circumstances peculiar to the property not from conditions that are general to the neighborhood
- The hardship cannot be self-imposed or economic
- The applicant bears the burden of proving that all conditions justifying a variance have been met
- Use variances cannot be granted

Authority for Variance

- The Board of Adjustment is designated as the appeal authority authorized to grant a variance from land use ordinance requirements
- Once granted, variances generally run with the land

The End