

Minutes of the Board of Adjustment meeting held on Monday, April 9, 2012, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Roger Ishino, Chair  
Travis Nay, Vice-Chair  
Joyce McStotts  
Rosi Haidenthaller  
Preston Olsen  
Chad Wilkinson, Community Development Manager  
Mark Boren, Assistant Planner  
G.L. Critchfield, Deputy City Attorney  
Citizens

The Staff Review meeting was held from 5:15 to 5:30 p.m. The Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Roger Ishino explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

#### APPROVAL OF MINUTES

Ms. McStotts made a motion to approve the minutes from March 12, 2012 as written. Ms. Haidenthaller seconded the motion.

A voice vote was made. The motion passed, 5-0.

#### CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

#### CASE #1446 – THOMAS HENRY – 5000 South Glen Street – Project #12-37

Tom Henry was the applicant present to represent this request. Chad Wilkinson reviewed the location and request for approval for an addition onto the front of the existing dwelling which is nonconforming to the current land use ordinance setback requirements. Murray City Code Section 17.52.040 states Board of Adjustment approval is required for construction of an addition onto a nonconforming building relating to existing setbacks from a property line. Murray City Code Section 17.100.080 requires a minimum front yard building setback of 25 ft. from the right-of-way line. The existing front of the dwelling is 15 ft. setback from the right-of-way line. The applicant is requesting a 10 ft. front yard setback variance to construct an addition onto the existing dwelling to align with the existing front of the dwelling. There are additional houses on this street which have similar setbacks. There are special circumstances related to this property with the setback of the house and property line that are not standard in a residential zone. There are similar setbacks on this street with the older dwellings and it would be a hardship for the applicant to comply with the 25 ft. setback. Mr. Wilkinson mentioned that the Board members have been given copies of an email sent in opposition to the variance. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal meets the standards for a variance. Therefore, staff recommends approval.

Mr. Henry, 5000 South Glen Street, stated that they recently removed the bushes that have been there for the last 60+ years, they found that the foundation was crumbling. Once he saw that he knew they had to do something with the structure itself, hence the addition.

Ms. Haidenthaller asked when the porch was originally added onto the home. Mr. Henry could not give a definite answer, but reiterated that it is so old that it is crumbling.

Ms. McStotts asked if during the construction the crumbling foundation would be addressed. Mr. Henry responded in the affirmative. Ms. McStotts then asked if he was planning on replacing the porch. He responded that the area that is crumbling and the porch are two separate areas and the portion that is crumbling will be taken care of. The rest of it is a solid structure and they will be following the same roof line. Mr. Nay asked if the finishes will be comparable to what currently exists. Mr. Henry responded by saying that they are trying to keep the same appearance to the front of the house.

The discussion was then opened up to public comment. No comment was made and the public comment section was closed.

Ms. McStotts made a motion to approve the variance according to the findings of fact as long as all building permits and code are met. Mr. Nay seconded the motion.

Vote recorded by Mr. Wilkinson.

A \_\_\_\_\_ Ms. McStotts  
A \_\_\_\_\_ Mr. Olsen  
A \_\_\_\_\_ Mr. Ishino  
A \_\_\_\_\_ Ms. Haidenthaller  
A \_\_\_\_\_ Mr. Nay

Motion passed, 5-0.

Ms. McStotts made the motion to approve the Findings of Fact as outlined by staff. Ms. Haidenthaller seconded the motion.

A voice vote was made. Motion passed, 5-0.

CASE #1447 – ADAM ARNESEN – 102 West 5885 South – Project #12-38

Adam Arnesen was the applicant present to represent this request. Mark Boren reviewed the location and request for variances to locate an accessory building in the rear yard, side yard, and drive access width variance at the property addressed 102 West 5885 South. Murray City Code Section 17.100.090 E. requires a rear yard accessory building to be located six feet (6') or more behind the dwelling; Murray City Code Section 17.100.080 B. requires a minimum side yard setback of eight feet (8') for residential dwellings and accessory structures; Murray City Code Section 17.100.090 D. requires an unobstructed twelve foot (12') paved driveway when a side yard is used for access to a detached garage or carport. Mr. Arnesen's narrative indicates the irregular shape of the property makes it difficult to locate the garage in the rear yard area in order

to comply with the 6 foot setback behind the dwelling. Mr. Arnesen is requesting a two foot (2') side yard drive access variance and a fifteen foot (15') rear yard setback variance to locate an accessory garage in the side and rear yard area. There is a seven foot (7') utility easement at the rear property line, and the applicant is trying to preserve some open space directly behind the house. The position of the house on the lot and the shape of the property make it difficult to locate the garage in the rear yard area to meet code and preserve open space. The proposed garage should meet the minimum side yard setback requirement which is eight feet (8'). Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development staff finds that the proposal meets the standards for a variance. Therefore, Staff recommends approval with the following conditions:

1. The detached garage shall be setback a minimum of eight feet (8') from the west side property line to comply with Section 17.110.080B of the Murray City Municipal Code.
2. The project shall meet all applicable building code standards.

Mr. Arnesen, 102 West 5885 South, made mention that he will abide by the conditions set forth by staff.

Ms. Haidenthaller asked if the shed in the photograph will be taken down. Mr. Arnesen responded in the affirmative.

Ms. McStotts asked Mr. Arnesen what is behind his property. Mr. Arnesen stated that there are two different neighbors that reside in the properties behind his.

The discussion was then opened up to public comment

Dyke Simmons, 114 West 5885 South, expressed concern about drainage. He asked if a retaining wall was going to be built, because any water that would drain would drain into the lowest part of their property. He also asked if there are any height restrictions. Ms. Haidenthaller responded by stating that the height cannot be any taller than the house or 20 feet, whichever is lesser.

Bill Fontana, 98 West 5885 South, stated he is a licensed concrete contractor and lives on the property next to the applicant and will be the one doing the work. He stated that the level of the existing driveway will come back. The foundation wall of the new garage will take care of the slough-off, grade change and retaining concerns by bringing the garage up to the level of the existing driveway.

Public comment section was closed.

Mr. Olsen made a motion to approve the variance request subject to the conditions set forth in the staff report. Ms. McStotts seconded the motion.

Vote recorded by Mr. Wilkinson.

A \_\_\_\_\_ Ms. McStotts

A \_\_\_\_\_ Mr. Olsen

A \_\_\_\_\_ Mr. Ishino

A \_\_\_\_\_ Ms. Haidenthaller

A \_\_\_\_\_ Mr. Nay

Motion passed, 5-0.

Ms. Haidenthaller made the motion to approve the Findings of Fact as outlined by the staff. Mr. Nay seconded the motion.

A voice vote was made. Motion passed, 5-0.

CASE #1448 – OASIS APARTMENTS – Project #12-39

Jody Burnett, independent counsel for the Board of Adjustments, explained the process and procedure for this item. He stated that the Board of Adjustments role on this item is an appeal. For variances the Board of Adjustments sits as the initial decision making body, that is why there is public comment and the approval of findings of fact to support the decision. For this case the Board of Adjustments is sitting as the designated appeal authority from a final decision of the Planning Commission. The Board of Adjustments is not the original decision making body and the task as set forth in the Murray City Code is for them to review the record and determine if the information that was actually presented to and considered by the Planning Commission was so unreasonable as to be arbitrary, capricious or illegal or whether there is substantial evidence in the record to support the Planning Commission's decision. There is no public comment at this appeal. It is appropriate for staff to give its presentation and the appealing parties to speak in favor of their appeal. The applicant has an opportunity to respond to those comments. All comments must be directed to information that has been presented to and considered by the Planning Commission in the record. The decision to be made by the Board of Adjustments will be to either deny or approve the appeal, based on the Planning Commission's decision and enter a written decision.

The appellants are appealing the Planning Commission's February 2, 2012 approval of a Certificate of Appropriateness for a mixed use development in the Murray City Center District (MCCD), property addressed 4916 South Center Street and 152 E Court Avenue. The proposed development included commercial space and 64 residential apartments. Municipal Code Ordinance 17.170.080 allows construction of new commercial buildings and high rise apartments within the MCCD zoning district subject to Certificate of Appropriateness approval. Section 17.170.060 authorizes the Board of Adjustments as the appeal authority for certificate of appropriateness for major alterations and new construction within the MCCD and outlines the process for an appeal. Section 17.170.060 (D) (2) (c) states that the decision of the board "shall be a review of the record to determine whether the decision was so unreasonable as to be arbitrary or capricious". Section 17.16.080 also outlines the appeal process for decisions of the planning commission and states that the "board of adjustment shall review the record of the planning commission decision to determine whether that decision was so unreasonable as to be arbitrary and capricious, or, stated differently, whether there is substantial evidence in the record to support the planning commission's decision."

Mr. Wilkinson reviewed the site information and maps that were provided in the staff report. In addition, he pointed out the "procedure" section in the staff report which outlines the sequence of events for this particular item. Mr. Wilkinson emphasized all applications that require Site Plan Review, Conditional Use Permit or Certificate of Appropriateness, go through the Site Plan Review Committee. This committee is comprised of city staff: Engineering, Fire, Water, Sewer and Power Departments. This item was reviewed initially by the Site Review Committee on November 28, 2011. The initial comments from that committee indicated some concern from staff. The applicant requested a postponement to address some of those concerns. One concern was the traffic study that was completed and submitted as part of the record to the Planning Commission. A revised application was re-submitted to the Site Plan Review Committee on January 17, 2012 that addressed the concerns. At that meeting some additional comments were received and forwarded onto the Planning Commission, including some additional conditions recommended by the City Engineer to mitigate potential concerns. In addition, there were conditions and revisions added by the applicant to address those concerns. Comments indicated in the appellants' materials came from initial review of the application. Those comments were addressed by the conditions of approval or revisions made by the applicant. That is reflected in the decision made by the Planning Commission. The General Plan called for the adoption of a Mixed Use Zone District (M-U) for that area in 2003. The Planning Commission found that this item did comply with the applicable and adopted standards and guidelines of the M CCD. The four members in attendance of the Design Review Committee recommended approval of this project unanimously with some conditions. Those conditions were addressed by the applicant between Design Review Committee and review by the Planning Commission and are reflected in the revised design that was approved by the Planning Commission. Based on the information provided, staff concludes the following:

1. The subject properties are located within the M CCD Zoning District which was adopted by ordinance March 15, 2011.
2. The M CCD zone allows for the requested uses and development subject to Certificate of Appropriateness approval by the Murray Planning Commission.
2. The proposal has been reviewed in conformance with adopted standards and has had due consideration by both the Design Review Committee and the Planning Commission.
3. The Design Review Committee recommended approval of the proposed new construction in the Murray City Center District subject to conditions.
4. The applicant has revised their plans to incorporate recommendations of the Design Review Committee and provided a traffic study to address concerns identified by staff and the design review committee.
5. With conditions, the proposed development meets the requirements of the M CCD Ordinance and complies with the adopted design standards.
6. The appeal materials do not identify any standards of the M CCD ordinance or design guidelines which have not been met by the development.

Based on review and analysis of the record and applicable standards and design guidelines Community and Economic Development Staff recommends that the Board of Adjustments uphold the decision of the Planning Commission to approve a Certificate of Appropriateness for a 64-unit apartment and mixed use building with the conditions of approval contained in the Planning Commission written decision.

Ms. McStotts asked if the structure located on the northwest side of the property was going to be removed. Mr. Wilkinson replied in the affirmative.

Janice and Jim Strobell, 4912 Wasatch Street, stated they are residents in the neighborhood. Ms. Strobell stated that she has a deep affection for this neighborhood, and appreciates the City's efforts in looking forward to create a more vital downtown district. However, she feels that this can be accomplished by creating a downtown that is in harmony with and compliments the surrounding neighborhoods. She recognized that this project is the first to be considered under the new MCCD zoning and sees many exciting aspects about the new zoning for the future of the City, but this specific project is not in harmony with the vision and historic preservation of that community. Ms. Strobell addressed the first section of the appeal that states the project does not meet the safety concerns of the city officials. Ms. Strobell stated that Center Street is a very historic street in the City, but was not designed to accommodate such a high density project. She stated that choosing to allow a development of this size in the MCCD on such a narrow street creates safety concerns that the appellants feel were not adequately addressed at the Planning Commission meeting on February 2, 2012. Preliminary reports by City departments brought up these safety concerns and the conditions of approval that were put in place sought to mitigate these concerns. However, there is not substantial evidence that these conditions will alleviate the safety concerns initially addressed. One of the conditions was to widen Center and Court Streets along the proposed project. She stated that widening the street only along the projects borders is arbitrary and capricious when the development will be affecting the entire street. The traffic impact study conducted by Hales Engineering did not address how the additional parking on the streets would impact the flow of traffic. If two cars are going in opposite directions down the street, they would not be able to pass each other due to cars being parked on both sides of the street. Mr. Strobell stated that the traffic study that was done considered only traffic that was near and around the building. She stated that the neighbors did their own parking survey where one evening the neighbors parked cars on both sides of Center Street to see what impact it would have. Their findings showed that in order for cars to pass, one of the cars had to pull off into a driveway. In another instance with two opposing cars approaching each other, one of those cars had to reverse. The main concern is that parking issue was not addressed in the information that was given to the Planning Commission and should be viewed as arbitrary and capricious. Ms. Strobell made mention that they have discussed their safety concerns with city staff. She stated that it is unfortunate that since they are employed by the City that they cannot state at this meeting their continued safety concerns. The conditions of approval did not adequately address any of these safety concerns. Having experienced a recent house fire on 4955 Wasatch Street this past month, it was made evident that the narrow streets in the neighborhood are not equip to handle an emergency in a building of high density. Mr. Strobell quoted from the staff report that was submitted to the Planning Commission on February 2, 2012 stating that the last sentence in section V. reads, "The Fire Department has expressed concern over the existing width of the streets and the number of units proposed." This concern was

not addressed except for the area immediately around the building. One of the recommendations that were made was to widen Court Avenue. This consisted of two lanes at 11 feet and one parking lane of 8 feet. By the City's own standard, they are requiring a street of 30 feet in width. He stated that Center Street is only 28 feet in width. By using the same mathematics used by the city, that leaves a total of 12 feet available in between parked cars. A fire truck cannot be brought in to fight a fire with only 12 feet. The day of the recent fire, Mr. Strobell noticed that the 8 foot wide fire vehicle was able to park, hook up the hoses and fight the fire. However, if there had been cars parked on both sides of the street there would only have been 2 feet on each side of the fire fighting vehicle. Ms. Strobell reiterated that this shows that there is not substantial evidence to support the granting of the Certificate of Appropriateness for this project and asked that the Board of Adjustments find that the Planning Commission's decision was arbitrary and capricious and grant this appeal. She also stated that the Certificate of Appropriateness violated an existing ordinance, therefore making it illegal in addition to arbitrary and capricious. She quoted Section 17.68.040.A "In no case shall the front landscaped area be less than 10 feet behind the back side of sidewalk or street right of way line except in the Transit Oriented District." Also states "Where multi-family residential commercial or manufacturing uses abut legal conforming single family residential, a solid fence or wall measuring 6 feet high plus a minimum 10 foot wide landscape buffer sustaining of trees and water, efficient plant material shall be placed between the property line and paved areas." She stated to the best of her knowledge the Oasis development does not provide for the 10 foot buffers. She stated this section of the chapter applies to all land uses and zoning districts in the city (which includes the MCCD) except single family residential zones. She stated that this project would not be legal based upon this chapter.

Roger Ishino stated that there are multiple persons wishing to speak and asked that there not be repetitive comments and information.

Kathy Elton, 4874 Center Street, stated she has lived here for 12 years. Ms. Elton stated she is addressing the second part of the appeal which is the project is not compatible with the existing historic neighborhood. She stated that the residents feel the decision by the Planning Commission was made without careful consideration of the following statements that were identified within the Oasis Apartments staff report. She quoted "The design guidelines state that new construction should respect and relate to the scale of the existing residential use. This particular location is directly across the street from an existing single family residential neighborhood zoned R-1-8. She stated that the commission should consider whether the proposed design and building height are compatible with the existing area. She stated in this neighborhood most of the homes were built many years ago and don't have two-story homes and consist of rambler homes with basements, making the transition from a one-story home to a 50 foot building more difficult. The neighborhood bordering this project is in the heart of the Murray residential historic district, with many of the homes being on the historical registry. The city has recognized the need to protect this historical residential district from encroachment by developments that would detract from homes in the neighborhood. The residents feel that this project does exactly that. She asked why is it that even if this project were to meet the standards outlined in the MCCD ordinance that no one, not the city planner, not the planning commission, feel it is important to ask how does this project relate to what is across the street. This is a single family low density residential neighborhood where it is proposed to be located. She stated that she knows

Mary Ann Kirk, who is on the historical board, expressed concerns in the staff report and stated "if this whole board were to look at what it looks like from across the street, this – proposed apartment is actually the biggest structure in the entire downtown area aside from the hospital. There is nothing like it. To me it's an odd place to start the maximum amount." There was a discussion of the power point presentation showing the scale of the proposed structure and the existing residential dwellings.

Ms. Elton asked why is it that the staff did not ask what a 5-story, 50 foot tall building would feel like to the people that live within the shadow of it. She stated the only way this project has been related in any way is to the possible future height of homes in this neighborhood and to the possible future height of development on State Street. Not to what currently exists which is a quiet, quaint single story historic neighborhood? She stated that the children in this neighborhood are riding their bikes and playing in the street because it is a great "Mayberry-like" neighborhood. She stated that she is in favor of having this type of development in Murray, but there needs to be a transition into a single story neighborhood and across the street is not an appropriate transition. She stated for the above reasons, the planning commission was arbitrary and capricious in making the decision to allow the structure to be placed in this area with no transition buffer.

Sage Fitch, 215 Maple Street, stated she is one of the appellants. She stated she is addressing the third point in the appeal, which is that the project does not comply with the Murray City General Plan. She quoted Section 17.170.050 which states: "All projects must be in general conformance with the Murray City General Plan." She stated that this project does not meet the requirements of the plan and is actually in conflict with the plan as detailed in chapters 3 "Urban Design & Community Building" and chapter 5 "Historic Preservation". She summarized a few points indicating that the Murray City general plan was prepared with input from Murray City residents and those residents feel that historic resources are important and should be preserved. It describes the need to protect residential neighborhoods from encroachment by inappropriate commercial and other uses. These undesirable land use relationships should be halted and that by allowing incompatible land uses to creep into established neighborhoods the edges of many neighborhoods are deteriorating. She stated that the neighbors feel that the proposed size and density of this proposal within an historical single family low density neighborhood exemplifies the specific meaning of this cautionary statement(s). She stated that the Murray City General Plan describes how abrupt transitions between these uses and well-kept residences creates a land use transition problem, which has led to the effected residences to question the long term viability of their neighborhood. Even though the Murray City General Plan was written in 2003, to Ms. Fitch it feels as though it was written specifically in relation to this project, sighting that past projects that have led to the same outcome(s) that are being discussed in this meeting. Those outcome(s) being inappropriate land uses that are permitted without careful consideration to the existing neighborhood. Ms. Fitch stated that the project threatens the viability and spirit of the neighborhood as well as tainting the success and future of the MCCD. Prior to the public hearing neighbors in the area were able to compile a petition of over 103 signatures of people that feel strongly opposed to this project. She asked the Board of Adjustments to take a broader perspective on this project and acknowledge that this process of obtaining a Certificate of Appropriateness has been flawed and that the decision by the Planning Commission was arbitrary in part because it is not in

conformance with the spirit and specific language of the Murray City General Plan in Chapters 3 and 5.

Mr. Ishino asked the board if they had any questions for the appealing parties. The board replied that their questions were for staff.

Ms. Haidenthaller asked Mr. Wilkinson if the ordinance for the 10 foot buffer was included in this project. Mr. Wilkinson responded by saying that the 10 foot buffer requirement is when a residential zoning district abuts a commercial or multifamily zoning district, so in this case it would not apply to properties across the street. All properties that abut this project are in the same zone. Ms. Haidenthaller asked if there are residential properties on the south side of Center Street that abut the project. Mr. Wilkinson responded by stating that the 10 foot buffer requirement is for "legal conforming single family dwellings". The properties on the south side of Center Street that abut the project are "non-conforming", so the requirement does not apply to those properties.

Ms. McStotts asked if the parking is going to be restricted to one side of the street. Mr. Wilkinson noted that the Staff Report has conditions of approval which include widening Court Avenue and Center Street, so that there can be on-street parking. Ms. McStotts asked again if that meant parking would be allowed on both sides of the street. Mr. Wilkinson stated that one of the conditions is that those two streets be widened to include additional area for parking along the applicant's property.

Ms. McStotts asked if snow plow removal had been addressed when making the addition for on-street parking. Mr. Wilkinson responded by saying that the existing street(s) allow on-street parking on both sides and this was taken into consideration with the Engineering Departments recommendations related to widening the streets. Widening of the street does not require the applicant to widen the entire street, but only on the applicant's property.

Mr. Olsen asked how many parking spaces there will be for the building. Mr. Wilkinson stated that the zoning ordinance requires one parking space per unit. This project will have a total of 75 spaces; 1 space for 64 units plus additional parking for the commercial space. This is to encourage the use of pedestrian and transit modes of transportation. The anticipation is that the use of parking spaces for residential and commercial will have differing peak demand periods, therefore will allow for overlapping parking during those times.

Mr. Nay asked if parking is secure. Mr. Wilkinson noted that there are several parking spaces under the building, but not all are there.

Mr. Ishino asked by what specs the street will be widened. Mr. Wilkinson made note that #17 in the conditions of approval state, "widen Court Avenue to accommodate two 11 foot travel lanes, on-street parking and sidewalk." The conditions of approval also state in #21, "road dedication will be required on Center Street and Court Avenue." Mr. Wilkinson added that Center Street would also be widened to accommodate on-street parking.

Ms. Haidenthaller asked when the traffic study was done, did they not anticipate the parking overflow issues. Mr. Wilkinson noted that the traffic study looks specifically at the traffic impacts generated from the development (i.e. number of trips). The ordinances of the MCCD actually govern the parking.

Mr. Ishino asked what is the capacity of Court Avenue and Center Street from an engineering perspective. Mr. Wilkinson referred to the summary of key findings in the traffic study which indicated the average daily trips (ADT) made on Center Street (south of Court Avenue) will be below the 2,000 vehicles per day (VPD) threshold for this roadway. Therefore, there is still available capacity.

Ms. Haidenthaller asked when the buffering ordinance was made for the MCCD, was there more than just height in the consideration. Mr. Wilkinson responded by saying that any considerations are limited to the ordinance that was adopted. Therefore, a determination of the ordinance appropriateness was made by the City Council and regulates this particular zone. The Planning Commission did consider the height of the structure and approved the Certificate of Appropriateness with that information.

Ms. Haidenthaller stated that the code allows a structure up to 50 feet high on the west side of Center Street, therefore decisions made by Planning Commission and Board of Adjustments must be made in accordance with that code. Mr. Wilkinson responded in the affirmative.

Blake Bauman, 36 South State Street, Salt Lake City, stated he is representing the law firm, Ray, Quinney & Nebeker and is representing the applicant for this development, Candlelight Homes, LLC. Mr. Bauman stated that Candlelight Homes, LLC is an experienced developer with projects throughout the Wasatch front. He stated that they take great pride in their name and the way they do business. They have worked with respect to this project as they do with every project they undertake, which includes an eye towards quality, meeting a community's needs and a successful end product that is a positive asset in addition to a local municipality. Mr. Bauman wanted to remind the Board the standard review that they are obligated to use when reviewing this appeal. The responsibility of the Board of Adjustments is to review the Planning Commission's decision and to determine only whether that decision was so unreasonable as to be arbitrary and capricious. In other words, whether there is substantial evidence in the record to support the Planning Commission's decision. Utah courts have held numerous land use decisions that a land use decision is arbitrary and capricious only if it is not supported by substantial evidence in the record. Substantial evidence is that quantity and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion. In determining whether the substantial evidence is supported, in this case the Planning Commission's decision, Utah courts will consider all the evidence in the record, and contrary and determine whether a reasonable mind could reach the same conclusion that the Planning Commission did. In the present case there is a sophisticated and rigorous review process. The developer submitted an application which was thoroughly and rigorously reviewed by city staff and later approved by a Site Review Committee and a Design Review Committee unanimously, then put before the Planning Commission as required by the ordinance. The Planning Commission's decision was unanimous in the approval of the application; therefore the Certificate of Appropriateness was issued. He stated that his firm feels that there is ample evidence to support that decision and that every issue the appellants have raised has had

thoughtful and reasonable care going into the Planning Commission's decision. The safety concerns that were brought up by the appellants have been addressed by the applicant through a traffic study which provided evidence that supports a substantial capacity left in the applicable roads. The developer has also agreed to mitigate against some of the potentially negative impacts of the project with respect to safety, traffic concerns and comments made by the Design Review Committee. The other issue the appellants brought up was their concern of the compatibility of the project with the existing neighborhood. The developer has made sure that the development complies with all city ordinances which have all been thoroughly reviewed by City Staff and the Planning Commission. The other concern of the appellants was that the city's General Plan was violated by this proposed project. The General Plan is enacted through zoning ordinances. In the MCCD zoning, this plan has complied with all ordinances. The process to get this project off the ground has been thoroughly and rigorously put to the test. The City has put forth 25 conditions upon the developer which the developer has agree to comply with. There is substantial evidence on the record that would support a reasonable mind voting in favor of this proposed project. Mr. Bauman stated that therefore, the decision made by the Planning Commission is not arbitrary or capricious.

Mr. Ishino asked for any concluding remarks from the appellants.

David Wilde, 4873 Stone Crest Dr., stated he is representing the appellants. He acknowledged that the residents have stated a good argument as to the compatibility this proposed project would have on their neighborhood including the traffic, parking and safety problems that will be created. Per City code 17.68.040 section A-1-c, "in no case shall the front landscape area be less than 10 feet behind the back side of sidewalk or street right of way line, except in the TOD." He stated that if this development is built as planned it will not fit that requirement; therefore, illegal. The Utah Courts have clearly stated that if a planning project is granted and there are any illegally violated statutes, ordinances or existing laws is in itself is enough to overturn the Planning Commission's decision. Mr. Wilde noted that is exactly what the Planning Commission has done. In regards to abutting properties, it states that if a project like this abuts on single family homes, cannot be built unless there is a setback of 10 feet, a wall and appropriate landscaping. The key issue is the term "abutting". Staff feels that this project does not abut neighboring property, but he feels that there is question. Even though this project is across the street from single family homes, he would argue that it does abut those homes and therefore violates the ordinance. He feels that if this board won't strike this project down, the courts will.

Mr. Burnett recognized that neither the Planning Commission nor the Board of Adjustment can impose requirements that are external to the ordinance. In regards to the landscaping issue that Mr. Wilde brought up, there is no standard in the MCCD zone identified that the project doesn't meet. The city ordinance does implement the General Plan and is controlling. Addressing the comment made by Mr. Wilde regarding the landscaping; abutting has to be immediately adjacent and not across the street. Through the definition, the ordinance is dealing with properties that have a property line between them. Regarding the 10 feet buffer; this section quoted by Mr. Wilde states "except in the TOD & DHOD districts". The MCCD zone and its ordinances have replaced the DHOD zone.

Ms. Haidenthaller mentioned that staff states the abutting properties on the south side of the project are non-conforming because they are a residential use within a mixed use zone. She asked if Mr. Burnett agreed with that. Mr. Burnett responded in the affirmative. He read ordinance 17.68.040 #2 verbatim; "Abutting Properties: Where multi-family residential, commercial or manufacturing uses abut legal conforming single-family residential or commercial or manufacturing abut multi-family residential uses..." The question is why legal vs. non-conforming. What is being protected is the anticipated long term legal conforming use whereas the presumption with non-conforming use is that eventually they will come into compliance with the current zone. Given that policy objective it makes no sense to impose a requirement for buffering and adjoining use that is anticipated over time will converted to a conforming use in that zone.

Mr. Ishino acknowledged the emotions involved and everyone's efforts in the information provided. He also pointed out that the task of the Board of Adjustments is to determine whether or not the Planning Commission decision was arbitrary.

Ms. Haidenthaller mentioned that she was looking through some information from the Utah Land Use Training Handbook and found that it was relevant to ask themselves if the Planning Commission acted in a reasonable manner in making their decision and was the decision in applying the ordinance correct. It is not the Board of Adjustments task to question whether or not the ordinance was written correctly or not.

Mr. Nay added that in addition, it must meet the legal requirements and standards put before it. Mr. Nay pointed out other neighborhoods in the Salt Lake Valley that have similar developments within their historical areas and those areas have become some of the most vibrant places in the city.

Ms. Haidenthaller made a motion that the Board of Adjustments uphold the decision of the Planning Commission to approve the Certificate of Appropriateness for the 64 unit apartment and mixed use building with the conditions and approvals contained in the Planning Commission written decision. In addition, Ms. Haidenthaller made a motion that staff prepare a written Findings of Fact that the chairman, Mr. Ishino, can sign in the Board of Adjustments behalf.

Seconded by Mr. Nay.

Call vote recorded by Chad Wilkinson.

- A \_\_\_ Ms. McStotts
- A \_\_\_ Mr. Olsen
- A \_\_\_ Mr. Ishino
- A \_\_\_ Ms. Haidenthaller
- A \_\_\_ Mr. Nay

Motion passed 5-0.

OTHER BUSINESS

Board of Adjustment Meeting

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Mr. Wilkinson asked the anticipated attendance for the Board of Adjustment meeting on May 14, 2012 meeting. Mr. Olsen and Mr. Nay will be available. Ms. Haidenthaller and Mr. Ishino will be absent. Ms. McStotts will be available if needed as this is her last scheduled meeting as a board member.

Ms. McStotts commented that it has been a pleasure working with everyone and it has been a pleasure serving the community.

Meeting adjourned.



Chad Wilkinson, Manager  
Community & Economic Development