

Minutes of the Planning Commission meeting held on Thursday, September 19, 2013 at 6:31 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Karen Daniels, Chair
Tim Taylor, Vice-Chair
Jim Harland
Vicki Mackay
Phil Markham
Scot Woodbury
Maren Patterson
Tim Tingey, Director Community Economic Development
Chad Wilkinson, Community Development Manager
G.L. Critchfield, Deputy City Attorney
Jade Paulsen, Office Administrator
Citizens

The Staff Review meeting was held from 6:00 to 6:30 p.m. The Planning Commission members briefly reviewed the applications on the agenda. An audio recording of this is available at the Murray City Community and Economic Development Department.

Karen Daniels opened the meeting and welcomed those present. She reviewed the public meeting rules and procedures.

APPROVAL OF MINUTES

Mr. Markham made a motion to approve the minutes of September 5, 2013 as presented. Seconded by Mr. Taylor.

A voice vote was made. Motion passed, 7-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

APPROVAL OF FINDINGS OF FACT

Mr. Taylor made a motion to approve the Findings of Fact for Conditional Use Permits for BLU, LLC a Reiki Business for the property addressed 5282 S. Commerce Drive #D-232. Seconded by Mr. Harland.

A voice vote was made. Motion passed, 7-0.

CHRISTENSEN CLINIC – 6358 South 900 East – Project #13-148

Travis Maughan was the applicant present to represent this request. Chad Wilkinson reviewed the location and request for a Conditional Use Permit for a vision clinic for the property addressed 6358 South 900 East. Municipal Code Ordinance 17.140 allows other medical and health services (LU #6519), which includes optometrists. The R-N-B zone requires new buildings to be of residential character as reflected in architectural style, texture, building materials, colors, and gable roof construction consistent with the design considerations of the R-N-B zone. The applicant is

requesting Planning Commission approval for the building to be 25 feet in height. A 6 foot high solid masonry wall shall be constructed with a minimum 10 ft. landscaped area along the west property line abutting the residential zone. The information provided for the site and structure indicates that there are a total of 39 stalls provided with 33 stalls required for this type of use. There are two disabled stalls provided with one being van accessible and the two stalls meeting the requirements for ADA stalls. The proposed building meets the front, side, and rear yard setback requirements for the R-N-B zoning district. The R-N-B zone requires a minimum of 15% of the site to be landscaped and the frontage areas must meet the requirements of the landscape ordinance. The landscape plan shows landscaping for the interior and along the property frontage that would be sufficient to meet the standards of the code. The interior landscaping includes the required minimum 10 feet of landscape buffering along the property boundary lines. A formal landscape plan with coverage calculations at the time of planting and reflecting an irrigation system will need be approved with the application for a building permit. The proposed project has an access shown off 900 East and that access will be used for ingress and egress. UDOT approval will be required for this access.

The proposed structure is not consistent with the defined development standards of the R-N-B zoning district which stresses the importance of structures having a residential character. The zoning ordinance states, "Generally, roofs shall be of gable construction to provide a residential feel. Flat and mansard roofs will not be allowed in this zone except by conditional use approval." The central part of the proposed facility would consist of a gabled roof, with the remaining area of the facility being constructed with flat roofing. While some flat roof elements may be appropriate, these elements should be used sparingly with gable construction making up the majority of the roofing for the structure. There are examples of buildings within the area that are consistent with the standards of the ordinance that have been constructed in the past several years. While variety is appropriate, buildings should maintain a predominantly residential feel. The current design while very attractive is more commercial in nature. Staff met several times with the applicant prior to submittal of the application and recommended changes to the design in order to meet the R-N-B standards. Based on the current design staff is recommending denial of the project.

Mr. Woodbury asked Mr. Wilkinson to show the slide showing the existing trees for clarification.

Travis Maughan, 2505 E Parleys Way, Salt Lake City, stated he is with Architectural Nexus, and is representing Clarus Vision. Mr. Maughan addressed design considerations that were taken while designing the building. He stated that the owner chose this site as he wanted a connection with nature and the site was chosen for the park like feel with all the surrounding trees. The building is situated in such a way as to address the desire to have views for patients and their recovery and interactions within the clinic. As this site is an eye clinic, glass elements have been oriented to help with direct sunlight issues. Mr. Maughan stated that while designing this building they took into consideration the agricultural feel of the site and of Wheeler Farm across the street. While talking to neighbors, it was discovered that this property has been named "The Farm" and has an old farm house on it. They wish to keep the feel with the materials that are being used. Mr. Maughan stated that the stone on the

building is incorporated on both ends of the building and will go all the way through the building to bring the outside into the building. He presented a 3-D animation to help clarify what the building will look like from all views. Mr. Maughan stated that they elevated the pitch roof element to help bring daylight into the center of the clinic. The building has been pulled back off the street to help give it more of a residential feel rather than a commercial feel.

Mr. Harland asked the applicant to play the 3-D animation again and stop it looking southwest on the corner of 900 East and Southwood and then again a flat view of 900 East. Mr. Harland clarified the views of the building and what you would see from both angles. Mr. Harland then asked for a rough estimate of what is the percentage of gabled roof to flat roof. Mr. Maughan replied with 35% gabled.

Mr. Markham asked if there are plans for removing or preserving trees on the perimeter of the property. Mr. Maughan responded that the original plan was to preserve as many trees as they could and with the zoning change some of the trees are going to be removed, particularly on the front. He explained that essentially the property will be heavily landscaped, particularly on the back end between the residents and the house with trees. He indicated that they plan to comply with all the buffers as well as having trees available. The goal is still to preserve as many trees as possible. Mr. Maughan stated that there is a requirement for a 6-foot masonry wall to be placed on west side of the property.

Greg Christiansen, 6412 South 900 East, stated that one of the important elements for the clinic would be to have views with nature and no other man-made structures. He stated that the tall windows are a waiting area for post-operative patients or patients having visits and the goal is to view nature from the inside looking out. Mr. Christiansen expressed that it was important to keep in mind that when looking at the building these renderings are not what will be seen from the street, you will mainly see natural elements of the building like stone and metal through shrubbery. Mr. Christiansen stated that he wanted to give some background to the building and their decision to bring it forward even though it was recommended for denial. When designing the building the sloped roof was a little bit of an oversight, and they realized that it is a strong desire on the planning committee's part to have the sloped roofs which they took an additional month's delay design roofs on the building. Mr. Christiansen stated that he didn't want to move forward with a building with different aesthetics as he had received so much positive feedback. He stated that the applicants went around to the neighborhood from 900 East to 725 East and from East Silver Shadow Drive to East Holly Avenue inquiring with residents for their opinion. Out of 72 homes, they received 68 yes's and 2 no's, 95% of people liked and approved the building and signed a paper stating that it was something they would want in their neighborhood.

The meeting was opened for public comment. There were no comments from the public and that portion of the meeting was closed.

Mr. Markham stated that he was very impressed with the building design.

Mr. Harland agreed with Mr. Markham and stated that the building is very attractive

and since the ordinance does not specifically identify the percentage of roof structure, it says generally gabled, he expressed that he would like to exercise some flexibility in looking at this project.

Mr. Woodbury asked how tall vegetation and landscaping would be. Mr. Christiansen clarified that the goal is to have pine trees that are 8 or 9 feet tall. There was a discussion to clarify which trees were going to stay and which trees were going to be removed. Travis Maughan clarified that they would not be maintaining any vegetation along Southwood and there would need to be new vegetation planted.

Ms. Daniels clarified with staff if the Commission chooses to vote against the denial, would there need to be a separate motion to approve the conditional use permit with conditions. Mr. Wilkinson responded that staff was not prepared to give conditions of approval and they would need to be coordinated to make sure to include all the conditions from Building, Fire and Engineering Divisions. Mr. Wilkinson stated there are other issues related to traffic and access that need to be addressed. Mr. Wilkinson clarified that someone could potentially make a motion for staff to draft conditions of approval and then bring the issue back to the Planning Commission.

Mr. Woodbury asked if there was discussion about putting gables on the outside corners to make it look more in harmony with the high center gable. Mr. Christiansen stated that the option was looked at and Mr. Maughan came up with multiple renditions and it can be done but it doesn't look as good.

Mr. Markham stated that it was impressive that the applicants have gone to the neighborhood and talked with the neighbors presenting the project to them.

Mr. Markham made a motion to approve a Conditional Use Permit for Clarus Vision, a vision clinic, at the property addressed 6358 South 900 East as presented. Ms. Daniels stated this item would have to be tabled since there are no conditions of approval.

Mr. Wilkinson clarified that a motion can be made for approval but he strongly recommended that the commission give staff a chance to address some of the other issues that are present with this site. Mr. Wilkinson stated that this could be brought back to the next meeting on October 3, 2013.

Mr. Taylor made a motion to continue discussion on a Conditional Use Permit for a vision clinic addressed at 6380 South 900 East until the October 3, 2013 meeting and have staff go back and do a standard review and develop conditions for approval for this item. Seconded by Mr. Harland.

Call vote recorded by Chad Wilkinson.

A _____ Scot Woodbury
A _____ Maren Patterson
A _____ Phil Markham
A _____ Karen Daniels
A _____ Vicki Mackay

A _____ Tim Taylor

A _____ Jim Harland

Motion passed, 7-0.

LAND USE ORDINANCE AMENDMENT - ELECTRONIC CIGARETTE – Project #130-145

Chad Wilkinson presented this item. In 2012, the State Legislature passed HB 95 which established regulations authorizing municipalities to license specialty tobacco retailers. The definition of specialty tobacco retailers under Section 10-8-41.6 of Utah Code includes “a commercial establishment in which:

- (i) the sale of tobacco products accounts for more than 35% of the total annual gross receipts for the establishment;
- (ii) food and beverage products, excluding gasoline sales, is less than 45% of the total annual gross receipts for the establishment; and
- (iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b, Pharmacy Practice Act.

State code further defines tobacco products as follows:

- (c) "Tobacco product" means:
 - (i) any cigar, cigarette, or electronic cigarette as defined in Section 76-10-101;
 - (ii) a tobacco product as defined in Section 59-14-102, including:
 - (A) chewing tobacco; or
 - (B) any substitute for a tobacco product, including flavoring or additives to tobacco; and
 - (iii) tobacco paraphernalia as defined in Section 76-10-104.1.

Utah Code stipulates the minimum distance required between individual specialty tobacco retailers, along with minimum distances separating these establishments from certain community facilities, such as schools, churches and residential uses.

In 2011, the Murray City Council adopted Section 17.42 which regulates Tobacco retailers within the City. This ordinance regulates not only minimum separation distances between tobacco retailers and community and residential uses, but also limits the number of these establishments allowed in the City based on the population. Murray ordinance does not currently include Electronic cigarettes (e-cigarettes) in the definition of tobacco retailers. The proposed text amendment would include e-cigarettes in the City ordinance along with other tobacco specialty product retailers in order to provide consistency between state and local ordinances. The same restrictions currently applying to tobacco retailers would apply to the sale of e-cigarettes.

Based on the above findings, staff recommends that the Planning Commission forward a recommendation of approval to the City Council for the requested amendment to the zoning ordinance. The amendment would add e-cigarettes to the

existing tobacco retailer ordinance and would restrict the number and location of these retailers within the City.

Mr. Taylor clarified that in the second paragraph where it talks about tobacco products it says 'Or Electronic Cigarette' everywhere else it says "E-Cigarette" except for in that one spot. Mr. Wilkinson responded that it can be clarified and that it might be better to state Electronic Cigarette at the beginning of the ordinance and then put E-Cigarette in parentheses. Mr. Taylor also clarified that in the referencing Utah Code sections, if those code sections change in the future, would it require a new text amendment or is that just an administrative change that staff can make. Mr. Wilkinson responded that it is an administrative change.

Ms. Daniels clarified that a 6 month moratorium was placed in June on the sale of e-cigarettes and it will end in December depending on approval from the City Council and Planning Commission. She asked if the electronic cigarettes are currently being sold, does it mean that they are out of compliance. Mr. Wilkinson replied in the negative. He explained that if it is an existing establishment it does not apply and the moratorium is on the establishment of new retailers.

The meeting was opened for public comment.

Josh Morin, 5546 Edgeberry Drive, stated that Blue E-Cigarette's was purchased in 2011, at that time Wells Fargo, the financing company, spoke to 3,500 business owners in that market from which that data concluded that 56% of e-cigarettes are purchased in e-cigarette only locations, another 20% is purchased online and the remainder is between tobacco stores and miscellaneous. Fifty-six percent of the entire product purchased is being done and sold at e-cigarette stores. Mr. Morin stated that he has an interest in opening a location in Murray. He does not want to carry any other tobacco products like tobacco bongs or tobacco pipes or anything of that nature.

The public comment portion of the meeting was closed.

Mr. Woodbury clarified with staff that this amendment states that stores selling only e-cigarettes are prohibited. Mr. Wilkinson replied that tobacco and e-cigarettes stores do not have to be combined, but they are included they just are not currently allowed as Murray City has reached the limit by population. Mr. Wilkinson clarified that there are State laws regulating location of where these businesses could locate but there is no regulation of number of stores.

Mr. Woodbury made a motion to recommend approval to the City Council for the requested amendment to the zoning ordinance to add e-cigarettes to the tobacco retailer ordinance, Section 17.42, and would restrict the number of and location of the retailers within the City and also with the additions by the City Attorney and Mr. Taylor. Seconded by Mr. Markham.

Call vote recorded by Chad Wilkinson.

 A Scot Woodbury

 A Maren Patterson

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A Phil Markham

A Karen Daniels

N Vicki Mackay

A Tim Taylor

A Jim Harland

Motion passed, 6-1.

OTHER BUSINESS

There was no other business.

Meeting adjourned at 7:25 p.m.

Chad Wilkinson, Manager
Community & Economic Development