

Minutes of the Hearing Officer meeting held on Wednesday, March 08, 2017 at 12:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Jim Harland, Hearing Officer
Jared Hall, Manager of Community Development Division
Jim McNulty, Development Services Manager
Tim Tingey, Director of Administrative & development Services
G.L. Critchfield, Deputy City Attorney
Jennifer Heaps, Office Admin III
Applicants

Mr. Harland opened the meeting and welcomed those present. He reviewed the public meeting rules and procedures.

CONFLICTS OF INTEREST

Mr. Harland stated that she has no conflicts of interest for this agenda.

CASE #1541 – DEAD CITY – 5425 South Vine Street– Project #17-28

Timothy Riggs was the applicant present. Jared Hall reviewed the location and request to appeal the decision of the Murray City Planning Commission regarding an application for Conditional Use Permit to allow a haunted house attraction on the property located at 5425 South Vine Street. The Planning Commission heard the application for Conditional Use Permit on February 2, 2017 and denied was approval.

The Haunted house attraction is an allowed use in C-D Zone and requires Conditional Use Permit approval. Staff did recommend approval to the Planning Commission with the recommendation of seven different conditions to try to mitigate likely impacts that could be imposed on this site. The Planning Commission discussed the conditions that were recommended by staff and felt that other conditions might be more appropriate but there were concerns that the potential impacts of the proposed use could not be mitigated with conditions, ultimately the Planning Commission ending up not approving this item.

The location is in an existing structure formerly the Wagon Master Restaurant across the street from the Murray City Commentary, just north of a large apartment complex otherwise it's surrounded by commercial and office uses. Mr. Riggs has plans in place to redo the parking lot, landscaping and extensive building renovations which would require a building permit approval.

One aspect to take into consideration are the finding that the Planning Commission has made as outlined in Section 17.56.060, item A, that the proposed use could not be desirable and would be detrimental to the general well-being of the community because of the nature of the use as a Haunted House related to the particular location. Item B, is that such a use will not under the circumstances of the particular case be detrimental to the health, safety, and general welfare or property improvements. The Planning Commission found on that count found the proposed use did not enhance the health, safety or general welfare of persons living nearby in the apartments because of the ambient noise, late

night crowds and it would be likely to result in misuse or damage to the cemetery. The planning Commission used the proposed use distress, quality, development ordinance to find the nature of the use and potential impact the use could not be considered compatible because of the apartments, Cemetery, due to the nature of the use as a Haunted House attraction. The Planning Commission found that the applicant had provided the correct information and commended him on the completeness of the application. Staff has found that issues raised in the finding could be mitigated by either further conditions of approval or more intense conditions of approval but the Planning Commission did not feel that because the nature of the use that it could not be mitigated with any reasonable conditions they could impose.

The applicant has maintained in this case that the Commission decision was erroneous because it was improperly based on the nature of the use as a Haunted House and having some religious condensation. Staff is not feel that a religious aspect plays a part of this decision but do feel that there are conditions that could be applied to mitigate impact. The Commission's findings were not based on religious overtones rather on impact they did not feel could be mitigated because of the nature of the use.

Mr. Harland asked for clarification between legislative and administrative decisions that the city makes regarding zoning. Mr. Halls answered that specifically regarding zoning the best way to character it that legislative decisions are policy decisions and administrative decisions made are based on code and the application of that code has been put in place by the legislative decisions. Most of the actions that the Planning Commission take are administrative as opposed to legislative. The Planning Commission's decision in this case was based on administrative decisions.

Mr. Harland asked when the City Council approved the C-D zoning designation it listed the applicable Conditional Use 72.19 and said it was an approved use within the area unless there are problems that could be mitigated with conditions. Mr. Hall answered that is correct. State code states that it is approvable unless there are no conditions that can imposed to mitigate reasonably anticipated impacts. This is where staff and council differ as staff does not feel that any reasonably anticipated problems could not be mitigated.

Mr. Harland commented that state code is very specific as it states a Conditional Use shall be approved if reasonable conditions are proposed or can be imposed to mitigate reasonably anticipated detrimental effects of the proposed use although, the city code does not say that the state code supersedes the city code.

Mr. Harland asked why Public Services was not included on the departmental review for a use of this nature and location to the City Cemetery. Mr. Hall stated that they were part of the review as Public Services weighted in on the Monday Planning review meeting and Parks and Recreation is always invited and did not attend. The Public Services members that were in attendance was Trae Stokes and Danny Astill for roads and traffic. Parks and Recreation often did not come in and a special invitation was not extended just the normal invitation. Mr. Harland staff if they had any concerns about the City cemetery in the initial report because it was not listed in any conditions. Mr. Hall replied that he did not have concerns about the cemetery in terms of damage or vandalism rather was

concerned about liability concerns with people running through the cemetery. Mr. Harbor was at the meeting and expressed similar concerns but that it was not worth of note as it is really a concern all the time.

Mr. Harland asked if at any time a Temporary Conditional Use Permit was considered. Mr. Hall answered that a Temporary Use Permit extends for ninety consecutive days that could be extended and it was not considered. Due to the significant investment the applicant has to invest in the project it does not benefit him.

Mr. Harland asked hypothetically if the appeal is upheld today what would happen with the CUP. Mr. Hall there was not Conditional Use Permit granted so if the appeal were upheld it then be remanded back to the Planning Commission for review and reevaluate and modify the conditions if necessary.

Mr. Harland wanted to clarify that the decision today is based solely on the record from the Planning Meeting and cannot consider any new information that might be presented that is not already in the record. The application submitted for this appeal hearing is considered part of the record.

Mr. Riggs, 1931 West 4960 South, review his impression from the meeting in that he addressed and answered many questions from the Planning Commission and discussed various conditions that could be imposed to be a good community member and stated that he could meet those conditions. Some of the requested conditions he did not get a chance to formally respond to such as a late question about noise. The main entrance is on the north side of the building and proposed an entrance on the South side of the building to elevate noise. Mr. Riggs stated that Haunted Houses don't chase people out of the building any longer as it better serves the business to corral patrons through gift shops and don't want people running on the property anywhere and feels it would mitigate the noise concern by the use of this business. Mr. Riggs further addressed people in the Cemetery and does not know for sure if his business will or will not increase the amount of people there but one possible condition he would be happy to pay for security personal during the busy weekends or Halloween. Overall any conditions to being a good neighbor or operator in the location could be addressed. Mr. Riggs stated that during the meeting Mr. Markham seemed visibly upset about this proposition and quoted Mr. Markham saying "the basic objection to the application is the theme of the business at the proposed location in relation to the cemetery and believes that making death and an entertaining activity is not appropriate to the people who would be utilizing the cemetery" and it was stated by Mr. Markham with such emotion that he could see the other members of the Planning Commission getting worried about what this business might represent which got everybody worked up about death in the city. A Haunted House business is just an entertainment facility that is focused on the Halloween holiday which is present and widely accepted in our community as the National Retail Federation conducted a survey in the country which revealed that about seventy percent of the population celebrates Halloween in some form or another, of that seventy percent about twenty of that population will go to a Haunted Houses. Retail establishments present Halloween related products in stores and they holiday are typically a fun and light hearted way to celebrate. Mr. Riggs stated he has never come across the object that was presented in the meeting that the message behind the Halloween themed holiday became offensive to someone who might be considering the cemetery or death.

Mr. Riggs stated that he went out and visited several Cemetery's in lots of different

locations all over Utah and noticed that many old Cemeteries are located on main thoroughfares next to it are schools, church, retail shopping centers, Rice Eccles stadium, fire stations, swimming pools, tennis courts, and smoke shops and it appears that all types of business are accepted next to Cemeteries and no ordinances to back that up. From a religious point of view if a Mosque or church were to be proposed to be located across from the cemetery some people might have objection to that religion based on conflicting views of who is saved and who is damned and has a much stronger message about death than a business that is focused on Halloween. Mr. Riggs stated that the research he had conducted found some relation to All Saints Day, All Hallows Eve and some Pagan references as most holiday do such as Christmas, and Easter. Mr. Riggs felt that if his venue were a Christmas related theme that nobody would care but because it is Halloween themed business it considered an offensive nature. Mr. Riggs stated that Murray City has an Amphitheatre nearby and made an example if it were to be located across from the Cemetery and wanted to put on a play such as Phantom of the Opera or Mc Beth with a witchcraft scene did not think it would have the same type of objection even though it has a similar theatrical type scene. Mr. Riggs does not feel that a Haunted House in this location will have a negative or obverse effect on people as it is meant to light hearted and fun. Mr. Riggs stated that his Haunted House is not meant to send a political message or a system of beliefs so it should not be judged upon a personal objection. Mr. Riggs stated that he is a unique Halloween guy as he does not like or watch horror films and instead likes monsters and movies such as Jurassic Park, The Mummy, and Pirates of the Caribbean because they have a fun monster theme to them and that is the type of business he operates. The City would also benefit from a fun addition to the city with an economic improvement because he would hire many of the local teenagers. Mr. Riggs stated that he understands Mr. Markham's decision but that it does not support enough of the general populations concern to have a negative impact and people would not be offended know a Halloween themed business is across the street.

Mr. Riggs stated he is willing to meet or mitigate any realistic conditions about how the business will operate in the City such as security and noise ordinances.

Mr. Harland asked Mr. Riggs if he is willing to provide security to the Cemetery by having a person physically present there. Mr. Riggs answered yes, and that he felt the Commissions main concern was on Halloween as some people might go to a cemetery on Halloween and having a physical presence there would reduce the likelihood if people entering the cemetery. Mr. Riggs stated that he noticed the cemetery does not have any signage that regulates the hours of operation or closure times only signs that state damage or removal of property is illegal. If a security guard were to be placed in the Cemetery he may be able to ask people to leave but may not be able to legally enforce it. Mr. Harland asked if Mr. Riggs considers this a reasonable request. Mr. Riggs stated yes. Mr. Harland asked if the Commission asked Mr. Riggs to provide security in the cemetery. Mr. Riggs answered they did not but it was a concern that was brought up but was over shadowed by the concern that Mr. Markham had and the conversation moved from trying to mitigate concerns to saying there are no reasonable conditions to apply to this business that would allow it to operate here.

Mr. Harland asked if Mr. Riggs would hire security officers to be on site. Mr. Riggs stated that he would typically hire from three to five security folks that operate the line and front area and some inside as well and it would be easy to hire a person to be across the way.

The security presence especially at the front of the building gives a security presence to people to know they are being monitored outside and inside with security cameras.

Mr. Harland asked Mr. Riggs about his prior operation of a haunted house at this location twenty years ago. Mr. Riggs explained that it was the Wagon Master Restaurant and Convention center at the time and he worked as an employee for the restaurant then the restaurant agreed to letting a haunted house operate in one of the three convention halls and worked to build and operate it. Half of the business was resultant and half was haunted house as temporary wall partitions were set up, entered the rear of the building went through the event and exited the same door that currently proposed in the month of October and then took it all down and prepared it for the Christmas holiday.

Mr. Harland asked if there were any negative impacts or problems associated with the business and how long was it in operation. Mr. Riggs answered it was operated for a single season and the next year he operated at the Utah Fun Dome. Mr. Riggs stated that originally everything seemed fine but the conversation that Mr. Markham discussed brought up a vague memory of some cemetery talk but does not recall any specific incidents but something could have happened. Mr. Riggs stated that he does not know if kids typically to the cemetery as his event is more of a date night theme and feels that the kids who were said to be in the cemetery until 2:00 a.m. may not be related to his business more like kids that may or may not be in the cemetery anyways on Halloween.

Mr. Harland stated that there was no comments from the public such as the Manager from the apartment complex to speak of any concerns. Mr. Hall stated they staff did not receive any public comments. Mr. Riggs stated the only comments that the planning Commission had about the apartment buildings were related to noise and explained that noise dissipates in a very particular way that is calculate able.

Mr. Critchfield stated on an appeal you must state only the facts that were given on the night of the Planning Commission meeting and it is improper to consider new facts that were presented about the noise mitigation, what business operations happened twenty years ago, and anything about the security guard that goes beyond the current record.

Mr. Harland asked if conversation of lighting had been resolved. Mr. Hall answered that no some conversation had started about potential search lights but no conditions has been approved with any specifications on lighting.

Mr. Hall address the characterization of Mr. Markham's responses explaining in his opinion that it was intense but it was not over the top as he was still function as a Planning Commissioner and making reasonable statements and not quite emotional as described.

Mr. Harland asked if there were no additional conditions in the staff report that were added that would have addressed the concerns that were presented that evening. Mr. Hall answered that is true and that characterization is fair, as there was discussion of other conditions that might need to be added to make it approvable and staff began to suggest that we could look at them in a continuance of the meeting but in the end Ms. Patterson's motion did not contain any changes to what we had presented in the staff report.

Mr. Harland asked if the designation for the Conditional Use is the only one for a haunted

house, other entertainment, and would a Haunted house fall under it. Mr. Hall stated that a previous haunted house request was processed under the same designation.

Mr. Harland stated that he does not have additional questions for the record and the transcript was quite thorough and stated that he felt the Planning Commission did have a healthy discussion regarding the issue and good questions for Mr. Riggs, and any error that was made were not considering additional conditions that could have mitigated some of the problems.

Mr. Harland stated he will forward her written decision to the Community Development Office at 4646 South 500 West, by noon on Wednesday, March 15, 2017.

There was no other business.

The meeting was adjourned at 1:29 p.m.

Jared Hall, Division Manager
Community and Economic Development