

## SALT LAKE CITY LAND USE APPEALS HEARING DECISION

Case No. PLNAPP2020-00790

Appeal of Planned Development Approval

2052 East Michigan Avenue

February 13, 2021

On January 28, 2021, this matter came before the Salt Lake City Land Use Appeals Authority. A hearing was held, over WebEx, a video conferencing platform which allowed for the participation of all parties. Appearances were made by Appellants David and Lisa Rose, along with Salt Lake City and Stanford Bell, representing the project. Members of the public were present and able to conference in to view and listen to the proceedings.

The appeal arises out of a decision by the Salt Lake Planning Commission on September 23, 2020 to approve a Subdivision and Planned Development at 2052 East Michigan Avenue, known as Stanford Commons. David and Lisa Rose (“the Roses or the Appellants), neighbors, appeal. They assert that the Planning Commission had the duty to reject the proposed project as non-complaint with the standards set forth in the City ordinance governing Planned Developments.

On appeal, the Roses carry the burden of proving, based on the record below, that the decision of the Planning Commission was incorrect while marshaling all evidence on the record which might support that disputed decision. And in order to prevail, the Roses must show that the decision below is not supported by substantial evidence or was the result of an error of law arising out of a statute or ordinance in effect at the time the decision was made. Based on the record, including the video of the Planning Commission meeting, and following arguments and submissions by the parties, the decision below is upheld.

The Stanford Commons project results from the creation of four new lots following the demolition of a pool area associated with and owned by a duplex condominium project known as the Townes. The four new lots would be used for the construction of three attached townhomes with the fourth lot designated as common area. This proposal requires planned development approval because taken individually, the lots do not meet the minimum area but combined with the fourth; the overall development does meet the requirements. The project also requires relief from the 20 foot setback and the grade change limitation. The resulting project proposes three attached townhomes with two car garages.

The Planned Development ordinance requires that the project meet at least one of six objectives based on compliance with at least one of the strategies associated with that objective as set forth in the standards. In doing so, “[t]he Planning Commission should consider the relationship between the proposed modifications to the zoning regulations and the purpose of a planned development, and determine if the project will result in a more enhanced product than would be achievable through strict application of the land use regulations.”

By its language the ordinance demands that the individual considerations set forth in the ordinance be considered not just in relation to the surrounding neighborhood but in comparison

to what could be built by right. The project site is zoned RMF-30, Low Density Multi-Family Residential and would allow construction of a multi-family structure with up to three dwelling units as condominiums or apartments as well as a single family detached home or duplex. Finally, the proposed project is four-feet lower than the 30 foot maximum allowed by the zoning. The Planned Development request asks for a reduction in the required 20 foot front yard setback, a grade change exception and that four lots be considered for three units in order to meet the minimum area required by the zoning.

As an initial matter, Appellants have failed to marshal the evidence in that they have not acknowledged the scope of the record before the Planning Commission. Throughout their briefing and in argument, the Roses assert that the Planning Commission “did not appreciate” the traffic configuration in the area, or “did not recognize” the existing setbacks in the neighborhood or the potentially intrusive nature of the window placement on the planned homes. They fail to acknowledge that the design, configuration and placement of the buildings, driveways and the relationship of the proposed planned development to the neighborhood were addressed through drawings, photographs and narrative material as well as testimony during the Planning Commission hearing. The record contains significant discussion about the impact on the neighborhood and traffic of a design with the massing associated with this project and its two car garages. Appellants attempt to marshal the evidence by describing the Planning Commission process and reciting the findings in the staff report but this does not meet their burden of marshaling “all of the evidence supporting the [Board's] findings and showing that despite the supporting facts and in light of the conflicting evidence, the findings are not supported by substantial evidence.” *Hodgson v. Farmington City*, 334 P.3d 484, 488-489 (Utah App. 2014). The Roses do not acknowledge the extent of the record with regard to the issues they raise.

In approving the project, the Planning Commission adopted the findings of the staff report except with regard to the front stairs, where it required a redesign to be approved by Planning Staff. The record, including the Staff Report, included numerous drawings and photographs of the proposed project and the surrounding neighborhood and issues of siting, traffic, proximity and design compatibility were discussed in detail. Appellant and the Community Council along several other neighbors wrote letters, testified and offered photographic evidence of the area disputing the staff report, objecting to the project and putting the issues squarely before the Commission for its consideration.

Appellants assert that the plan was clearly contrary to the standards such that disapproval was plainly warranted. They argue, for example, that the project is contrary to the Master Plan but fail to acknowledge that the area was zoned and designated to allow multi-family housing and language in the East Bench Master Plan specifically encouraging “a diverse mix of housing choices of all stages of life and income.” To the extent the Planning Commission found the development to support this standard as analyzed in the Staff Report (“Master Plan Implementation) the finding is supported by the record.

The Roses further argue for example, that the project is incompatible with the neighborhood, one of the six objectives that might support Planned Development approval. The Staff report adopted by the Planning Commission found that the project complied or generally complied with seven of the objectives relating to neighborhood compatibility in terms of scale,

orientation and materials, setbacks, facades, lighting, and dumpster locations. Appellants assert that the Planning Commission did not understand these facets of the project and should have reached a different conclusion. Yet the Planning Commission was well aware of what the project looked like and how it related to other homes in the area. Attachments F and G to the staff report discussed the manner in which the project complied with the various standards. And there is sufficient evidence on the record from which the Planning Commission could find this project an improvement in compatibility over a three unit, taller apartment structure. Disputes with the staff findings were raised and considered by the Commission. The same is true as to buffering, mobility and landscaping. In each case, there were vigorous arguments against approval by neighbors and the Community Council putting these issues squarely before the Commission; which chose to adopt the staff report findings rather than the objections.

In order to overturn the decision of the Planning Commission, the Roses must show not that one finding by the Commission was in error, but rather that the Commission reached conclusions with no support in the record. This they were unable to do.

Finally, although the Appeal documents reference the subdivision approval, no argument or assertion of error is made with regard to that determination by the Planning Commission. Therefore, approval stands.

Given that the Appellants have failed to identify any error of law and the record below provides support for the action of the Planning Commission in approving the subdivision and Planned Development requests, the decision below is upheld.

DATED this 13<sup>th</sup> day of February, 2021.

/Mary J. Woodhead/  
MARY J. WOODHEAD  
Appeals Hearing Officer