Salt Lake City Land Use Appeals Hearing Officer
PLNAPP2021-00696
Appeal from Planning Commission Decision
1844-1852 East 2700 South – Planned Development and Preliminary Plat Approval
August 13, 2021

This is an appeal from a decision by the Planning Commission to approve a preliminary subdivision plat and planned development for the creation of three residential lots from two pre-existing lots in the R-1/12,000 single family residential zoning district. The appellant neighbor of the proposed development, Kevin Donahue, claims that the action of the Planning Commission is illegal. The appeal is denied as explained below.

RECORD

The record includes the Staff Report, a document of 81 pages dated August 12, 2021, which includes the City's introduction to the matter; a project vicinity map; an initial appeal letter by Mr. Donahue dated July 6, 2021; a brief from a city attorney; the Planning Commission's record of decision; the minutes of the Planning Commission meeting held June 9, 2021; the agenda and mailing list of that Planning Commission hearing; the early notification letter and mailing list; and the applicant Harvath family's written opposition to the appeal. filed by Brett Hastings on behalf of the property owner, and a response filed by the City Attorney dated March 5, 2021. The record also includes a video recording of the hearing held before the Appeals Hearing Officer on August 12, 2021.

Appearing at the hearing on this matter held August 12, 2021 were Kevin Donahue, who brings this appeal; city representatives Paul Nielsen, Michaela Oktay, Joel Paterson, John Anderson, and Aubrey Clark; and applicant Barbara Harvath as well as legal counsel for the applicant, Victoria Hales. There also appeared to be at least five members of the public who observed the hearing. The hearing was held electronically as the hearing officer determined that to hold a live hearing would constitute a substantial risk to public safety in light of the current Covid-19 pandemic.

Mr. Donahue spoke first at the hearing. Mr. Nielson then commented on the City's view of the appeal. Ms. Hales then spoke and was followed by summary comments by Mr. Donahue. All speakers were allowed to speak without interruption and for whatever time they wished to speak at their turn, without limitation of time. At the conclusion of the hearing, which lasted from 3:15 p.m. until 3:43 p.m., the hearing officer took the matter under advisement, stating that a written decision would be provided at a later time.

STANDARD OF REVIEW

An appeal from a decision by the Planning Commission, according to local ordinance as well as Utah Code Section 10-9a-707(3) and (4), which reads: If the scope of review of factual matters is on the record, the appeal authority shall determine whether the record on appeal includes substantial evidence for each essential finding of fact. The appeal authority shall (a) determine the correctness of the land use

authority's (that is, the Planning Commission's) interpretation and application of the plain meaning of the land use regulations; and (b) interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.

Under the Utah Land Use Development, Management, and Administration Act, the most significant local land use decisions are to be made by citizen planners, either elected members of the City Council or appointed members of land use authorities such as the Planning Commission. It is not the role of either a hearing officer or the courts to impose their preferences on land use matters. A court or hearing officer is obligated to defer to local officials unless the person challenging a local decision demonstrates that an administrative decision, such as the one at issue here, was made without the support of substantial evidence in the record or in opposition to state statute or local ordinances. A court or hearing officer is also obligated to favor the approval of a land use application unless it does not comply with a plain reading of the ordinances.

FINDINGS OF FACT:

1. On each of the two properties at 1844 and 1852 East 2700 South in the City is a home which is allowed as a principal use in the R-1/12,000 zoning district.
2. The two properties combined involve approximately 43,681 square feet of land area.
3. The total frontage of the two combined lots on 2700 South Street is 160 feet.
4. A graphic representation of the properties provided to the Planning Commission show two structures identified there as "garage".
5. The owners of the two properties, the Harvaths, filed application for planned development and preliminary subdivision plat approval to create three lots from the two previous lots on the properties.
6. The Planning Commission heard the matter and approved the applications on June 9, 2021.
7. Kevin Donahue filed a timely appeal of the interpretation. That appeal is now before the hearing officer.

CONCLUSIONS OF LAW:

1. In his appeal, Mr. Donahue argues the following points:
    a. The application violates the zoning requirements and adopted policies and regulations.
    b. The application violates the Sugar House Master Plan
    c. The application violates the planned development purpose.
    d. There are obvious errors which render the approval null and void.
    e. The three lots do not meet the minimum lot frontage allowed in the zoning district.
    f. The three lots do not preserve and improve a desirable residential environment.
    g. The proposal is a money maker for the applicant who is proposing to do more development in previously undeveloped areas of lots in the neighborhood.
    h. The proposal violates the low density residential classification and represents a density of 5.4 units per acre.

i. The proposal is not compatible and integrated with the surrounding neighborhood in that it allows a flag lot and thus impacts privacy and open space.
j. This is infill. Highland Acres does not allow infill.
k. The project planner acted as a private consultant for the applicant.
l. The project violates the character of the community by occupying traditionally unoccupied space.
m. The project violates the requirement in Table 21A.55.060 of the City Code which requires a minimum net lot area of 24,000 square feet.
n. The chair of the Planning Commission made a statement to counsel for the applicant during the public meeting and before the commission voted on the matter: "I think you'll be happy with the conclusions, so I don't think you'll want to interfere."
o. Two planning commission members left the hearing during the public comment period so the decision is null and void.
p. Staff refused to photograph the proposed project from the neighbors point of view.
q. Staff exhibited bias in favor of the applicant did not result in an objective, unbiased hearing.
r. Staff "cherry picked" the information provided to the Planning Commission and ignored illegal aspects of the proposal.
s. Private characterizations of the comments of citizens as "public clamor" was prejudicial against them.
t. The Planning Commission should not have heard the proposal until current complaints about occupancy of illegal residences on the properties was resolved.

2. This matter involves the approval of a land use application. Utah Code Section 10-9a-509 therefore applies, which requires that an application be approved if it complies with the land use ordinances in place when the completed application was filed and applicable fees paid.
3. The burden of proof rests on Mr. Donahue who must demonstrate that the decision is not supported by substantial evidence or is otherwise illegal.
4. Among the long list of appeals issues brought up by Mr. Donahue are only three which argue that the approved plan violates specific sections of the local ordinance. These include items e - minimum frontage; h – density; and m – minimum lot size.
5. As to item e, minimum lot frontage, the code specifically provides, at Section 21A.55.020 A that "In approving a planned development, the Planning Commission may change, alter, modify, or waive the following provisions of this title: A. Any provisions of this title or the City's subdivision regulations as they apply to the proposed planned development . . ." The Planning Commission thus legally allowed lots with less than 80 feet of lot frontage.
6. As to item h, density, the resulting development has the opportunity to provide three separate residences, each on a lot more than 12,000 square feet in size, within the area to be occupied by the planned development. The area of that planned development is slightly more than an acre, so the approval is for three residences in approximately one acre of ground. This is consistent with the planned density in the R-1/12,000 zone.
7. Also as to item h, the approval does not legalize any of the alleged second residences within any of the three lots. This issue is irrelevant to the approval at issue here.

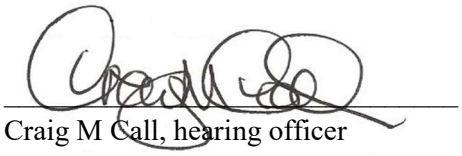
8. As to item m – minimum lot size. The table cited by Mr. Donahue refers to the total size of the lot to be developed as a planned development. Where the minimum size of the area contained within the planned development is 24,000 square feet, the size of the combined lot included in the planned development exceeds 45,000 square feet. The planned development is thus legal with regard to this issue.
9. As to Mr. Donahue's other arguments regarding compliance with the Master Plan, it has been shown that the Master Plan specifically anticipates the development of lots behind existing residences. It is also a given principle of Utah land use law that where compliance with general standards and standards is concerned, deference to the decision of local citizen planners, such as the Planning Commission here, is to be given. It is also clear from state law mandates that a general plan is only advisory, absent local ordinances which require decisions to be based upon the general plan. Decisions must be based on the specific requirements of the ordinances, not the general plan.
10. As to procedural issues such as whether a quorum must be present during all aspects of a public hearing, I conclude that it is not. Mr. Donahue has cited no legal authority in either statute, local ordinance, or case law to support that conclusion. I personally know of no legal authority which would hold, absent an ordinance requiring attendance, that a quorum is needed at any time other than when a vote or other official action is taken.
11. I also conclude that the alleged biases and preferences, even if true, do not defeat the decision of the Planning Commission here. For the majority of applications, planning staff provides an opinion as to whether or not an application complies with the ordinances and qualifies for approval. That is not an indication of undue bias. There is no allegation here of the kind of bias on the part of the decision makers – members of the Planning Commission – that would void a decision by them, which they made after allowing for public input and providing other means that the preferences of the community could be communicated to them. Mr. Donahue has provided no legal authority to support any other conclusion here.
12. As to the other items and allegations, Mr. Donahue alleges that certain facts, events, and statements related to the approval should render the approval null and void. Where the state code requires approval of an application if it conforms to the ordinances, the Planning Commission's decision here was not only appropriate but required by state law. I found no evidence in the record of the decision by the Planning Commission or in Mr. Donahue's legal arguments that the decision was not legal.
13. The only evidence in the record – an extensive staff report with detailed findings and conclusions – shows that the application was entitled to approval. While the other details alleged and argued by Mr. Donahue have been frustrating to him, he does not provide, and I am unaware, of any case law precedent where a Utah appellate court has voided a local land use decision based on any factual situations similar to those explained here. I have not listened to the meeting video because even if every allegation made by Mr. Donahue is correct, his conclusions still would have no bearing on the only issue here: whether the application conformed to the ordinances.
14. While the discussion at the Sugar House Community Council may have been recorded, it was not part of the official record of the decision by the Planning Commission and there is no evidence that the recording of the Community Council meeting was viewed by the Planning Commission.

As such, it is not part of the record of their decision and therefore not something that I could view as part of this appeal.

15. The sole issue here is whether the decision of the Planning Commission violated a law or ordinance and was based on substantial evidence in the record. Substantial evidence does not mean that there is logic and evidence on only one side of an issue – it means that even when there is evidence and logic in favor of taking another course, if there is evidence and logic in favor of the course taken, that decision will stand.

The legal arguments failing here, the Planning Commission's actions are upheld. The appeal is denied.

Dated this 13th day of August, 2021.



Craig M Call, hearing officer