



Staff Report

PLANNING DIVISION

DEPARTMENT of COMMUNITY and NEIGHBORHOODS

To: Salt Lake City Planning Commission
From: Amanda Roman, Urban Designer
801-535-7660 or Amanda.Roman@slcgov.com
Date: February 15, 2024
Re: PLNAPP2023-01007 – Appeal of a Planning Commission Decision to Deny a Design Review (PLNPCM2023-00707)

Appeal of a Planning Commission Decision

PROPERTY ADDRESS: 220 & 250 S 200 E
PARCEL ID: 16-06-176-013-0000 & 16-06-176-028-0000
GENERAL PLAN: Downtown Plan
ZONING DISTRICT: D-1 Central Business District
APPELLANT: Bruce Baird, representing the Design Review applicant, J. Fisher Companies

Attached is the documentation submitted for an appeal (PLNAPP2023-01007) regarding the decision of the Planning Commission to deny a Design Review request for the following modifications to the D-1 Central Business District standards in 21A.30.020.D1 and the Design Standards in 21A.37.050:

1. A reduction in the minimum building height from 100 feet to approximately 78' 6"
2. A decrease in the required glass percentages on both the ground floor and upper floors
3. An increase in the maximum street facing facade length from 150 feet to approximately 307' 4", along 200 East
4. Modifications to the upper floors stepbacks required for buildings between 78-104' within the D-1 zone

BACKGROUND & PROJECT DESCRIPTION

Mitch Vance with J. Fisher Companies, representing the property owner, submitted a Design Review application requesting modifications to both the D-1 Central Business District standards and the zone's Design Standards. The requests would facilitate the development of a mixed-use development at approximately 220 and 250 S 200 E. The site consists of two parcels totaling approximately 1.45 acres (63,000 SF).

The proposed building is seven stories, built on a two story concrete podium using stick-frame construction. The design consists of five levels of residential units situated over two levels of parking. The proposed development includes 201 units, ranging from studios to two-bedrooms, 157 parking spaces, and 9,500 square feet of retail and amenity space. The northern side of the property would include a publicly accessible midblock walkway, as required in the Downtown Plan, connecting 200 East to Edison Street.

The proposed design complies with the D-1 Central Business District regulations in City Code section 21A.30.020.D1, with the exception of the proposed building height of 78'6", which falls under the zone's minimum building height of 100 feet. The D-1 zone requires requests for building heights above 200 feet and below 100 feet to be approved through the Design Review process in section 21A.59.

In addition to not meeting the minimum height requirement of the D-1 zoning district, the proposal does not comply with several D-1 Design Standards within section 21A.37. The applicant requested to increase the building length from 150' to 307'4", reduce the required glass percentages on the upper floors from 50% to between 25-31%, reduce the glass on the lower floors from 60% to 51% , and modify the required building step backs. Required design standards can be modified through the Design Review process in 21A.59.

The purpose statement of the Design Review process states, "The intent of the process to review larger developments is to verify new developments are compatible with their surroundings, impacts to public infrastructure and public spaces are addressed, and that new development helps achieve development goals outlined in the adopted master plans of the city as identified in the purpose statements of each zoning district."

December 13, 2023 Planning Commission Meeting

The request was heard by the Planning Commission at the December 13, 2023, public hearing. A [video recording](#) and meeting minutes can be viewed online. The public hearing begins at timestamp 43:30 and ends at timestamp 1:49:25.

The Planning Commission denied the requests based on the proposal not meeting the purpose of the D-1 Central Business District as required in section 21A.59.050.A, which states, "Any new development shall comply with the intent of the purpose statement of the zoning district and specific design regulations found within the zoning district in which the project is located as well as the city's adopted "urban design element" and adopted master plan policies and design guidelines governing the specific area of the proposed development." While the Planning Commission denied the Design Review requests, the denial does not prohibit the site from being redeveloped.

BASIS FOR APPEAL

The appellant's application and brief are included as Attachment B and the City Attorney's response to the appeal is included as Attachment C. This is an appeal of a Planning Commission decision; therefore, the Appeal Hearing Officer's decision must be made based on the record. This is not a public hearing; therefore, no public testimony shall be taken.

ATTACHMENTS

- A.** Vicinity Map
- B.** Appeal Application & Documentation
- C.** City Attorney's Brief
- D.** Record of Decision
- E.** Motion Sheet
- F.** Minutes from December 13, 2023 Meeting
- G.** Staff Report from December 13, 2023 Meeting

NEXT STEPS

If the decision is upheld by the Appeals Hearing Officer, the decision of the Planning Commission stands. If the Planning Commission's decision is not upheld, the matter could be remanded back to the Commission. The decision made by the Appeals Hearing Officer can be appealed to Third District Court within 30 days.

ATTACHMENT A: Vicinity Map

Vicinity Map



ATTACHMENT B: Appeal Application

SUBMITTAL REQUIREMENTS

Please provide the following information with your application. Confirm that you have included each of the requirements listed below by adding a check mark for each item.

CHECK

STAFF

REQUIREMENTS (21A.16.030.A)

A written description of the alleged error and the reason for this appeal, see [page 2](#).

INCOMPLETE INFORMATION WILL NOT BE ACCEPTED

INITIALS

DISCLAIMER: I ACKNOWLEDGE THAT SALT LAKE CITY REQUIRES THE ITEMS ABOVE TO BE SUBMITTED BEFORE MY APPLICATION CAN BE PROCESSED. I UNDERSTAND THAT PLANNING WILL NOT ACCEPT MY APPLICATION UNLESS ALL OF THE FOLLOWING ITEMS ARE INCLUDED IN THE SUBMITTAL PACKAGE.

16-06-176-028-0000

BEG N 00°02'21" E 82.50 FT FR SE COR LOT 8, BLK 56, PLAT "A", SALT LAKE CITY SUR; S 0°02'21" W 255.02 FT; S 89°58'11" W 165.08 FT; N 0°02'35" E 255.02 FT; N 89°58'11" E 165.06 FT TO BEG.

16-06-176-013-0000

COM 5 RDS N FR SE COR LOT 8, BLK 56, PLAT "A", SLC SUR., N 5RDS; W 249 FT; S 84.5 FT; E 84 FT; N 1.75 FT; E 165 FT TO BEG. 6361-1290 6515-0138 6958-2332 6957-2725 7140-0899 7646-1924 8364-0942 9481-1724 9861-2648 10427-4498

AGENT AUTHORIZATION

I (we) JF Luxe Partners QOZB, LLC and JF Luxe Partners II QOZB, LLC, the owner(s) of the real property described in the attached Appeal of Decision, do authorize as my (our) agent(s) Mitch Vance to represent me (us) regarding the attached application to appear on my (our) behalf before any administrative or legislative body in Salt Lake City considering this application and to act in all respects as our agent in matters pertaining to the attached application.

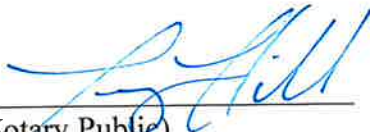
JF Luxe Partners QOZB, LLC

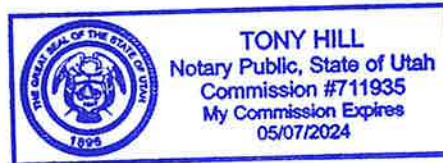
By: 
Name: Owen Fisher
Its: Manager

JF Luxe Partners II QOZB, LLC

By: 
Name: Owen Fisher
Its: Manager

Dated this 21 day of December, 2023, personally appeared before me Owen Fisher, the Manager of JF Luxe Partners QOZB, LLC and JF Luxe Partners II QOZB, LLC, the signer(s) of the above agent authorization who duly acknowledged to me that they executed the same.


(Notary Public)



(Seal)

AFFIDAVIT

PROPERTY OWNER

State of Utah

§

County of Davis

I (we) JF Luxe Partners QOZB, LLC and JF Luxe Partners II QOZB, LLC, being duly sworn depose and say that I (we) am (are) the owner(s) of the property identified in the attached Appeal of Decision and that the statements herein contained and the information provided in the attached are in all respects true and correct to the best of my (our) knowledge. I (we) also acknowledge that I (we) have received written instructions regarding the process for which I (we) am (are) applying.

JF Luxe Partners QOZB, LLC

By: 
Name: Owen Fisher
Its: Manager

JF Luxe Partners II QOZB, LLC

By: 
Name: Owen Fisher
Its: Manager

Subscribed and sworn to me this 21 day of December, 2023.


(Notary Public)



(Seal)

BRUCE R. BAIRD PLLC

ATTORNEY AND COUNSELOR

2150 SOUTH 1300 EAST, FIFTH FLOOR

SALT LAKE CITY, UTAH 84106

TELEPHONE (801) 328-1400

BBAIRD@DIFFICULTDIRT.COM

December 21, 2023

VIA ELECTRONIC SUBMISSION AND EMAIL

Mr. Nick Norris. Director
Salt Lake City Planning Department

**Re: Edison Street Design Review (D1- CBD)
PLNPCM2023-00707
220 and 250 South 200 East
Appeal of Planning Commission Denial of Design Review**

Dear Nick:

I am counsel for JF Luxe Partners II QOZB, LLC, and J. Fisher Companies, LLC, the owner and developer, respectively, of the above-referenced properties and project. This letter sets out the legal basis for my clients' contemporaneously-filed appeal of the Planning Commission's decision on December 13, 2023, to deny the requested design review in the D1-CBD Zone.

I will not go into extensive detail about the project as the Staff Report from Amanda Roman of your office does an excellent job of that. The same Staff Report also explains why your Department recommended approval of the proposed exceptions so I will not go into that either. It should suffice to say that the Staff Report would provide, at the very least, "substantial evidence" to support the granting of the design review exception.

Instead, I will focus only on the Planning Commission's denial. Simply put, that denial was both illegal and illogical. It was illegal because it directly violates a Utah Supreme Court decision and it was illogical because it violates the logic explained in an opinion from the Ombudsman's Office on a very similar issue.

I watched the recording of the Commission's hearing. Contrary to the Record of Decision that was issued after the hearing, the sole basis of the motion to deny at time stamp 1:47:35 of the recording <https://www.youtube.com/watch?v=O1geHGiMa80> was that the requested design review exceptions had not established that it met the standards in the Code because it did not comply with the "intent" of the recently adopted changes to

Mr. Nick Norris, Director

December 21, 2023

Page 2

some aspects of the design review standards. That was all there was in the motion. Nothing more.

That basis for the Planning Commission's denial was illegal, arbitrary and capricious. I will not waste a lot of my client's time and money explaining this illegality when there is an opinion from the Utah Supreme Court and the Ombudsman directly on point. As often happens, the Ombudsman's opinion is from a case of mine. <https://propertyrights.utah.gov/advisory-opinions/advisory-opinion-164>

The following introduction is tightly paraphrased from Ombudsman's Opinion 164. In 2015, a developer proposed to construct a multi-family project located in Pleasant View City's Transportation Oriented Development (TOD) Zone. A stated purpose of the TOD Zone was, among others, to provide standards for development of areas close to Pleasant View's major transportation hubs, and "[p]rovide for development of compatible mixed uses in close proximity to one another to provide a blend of retail, service, office, dining and residential uses."

Pleasant View believed that the proposal was not consistent with the requirements of the TOD Zone because the "Purpose and Intent" section of Pleasant View's City Code contemplated mixed use development and the proposal at issue included only residential uses. If the development were approved as proposed, the entire TOD Zone would have consisted only of multi-family residential housing (as the rest of the similarly zoned property had already been developed in that manner) which Pleasant View believed would not fulfill the intent of the zone. On behalf of the developer, I responded to the City's concern by asserting that the proposal complied on its face with the requirements of the TOD Zone because "multi-family high density residential" was a conditionally permitted use in the zone. I also cited relevant case law which will be discussed below.

Subsequently, the Planning Commission denied the development application determining that the "purpose and intent" of the TOD Zone was not met since the development proposal consisted of a single use (multi-family residential) and did not incorporate other compatible non-residential uses. Mr. Peterson appealed that decision to the City Council as was provided for at the time. Wisely, Pleasant View City's staff appeared to assume that the City Council would make the same mistake and preemptively requested that the Ombudsman provide an opinion about whether the City properly interpreted its ordinance in denying the request for approval.

Section C of the Ombudsman's Opinion is quoted directly below and is dispositive here:

C. Legal Effect of the "Purpose and Intent" Section of the TOD Ordinance.

Pleasant View City asserts that it can require Mr. Peterson to include a mix of uses in its project proposal because of the "Purpose and

Intent” section of the TOD ordinance. One of the stated purposes of the TOD Zone is to “[p]rovide for development of compatible mixed uses in close proximity to one another to provide a blend of retail service, office, dining and residential uses....” Pleasant View City Code § 18.39.010(A)(2).

In *Price Development Co. v. Orem City*, 2000 UT 26¹, ¶ 23, 995 P.2d 1237, the court discussed the role of a policy section in a statute. The court “referred to a statement of legislative purpose as a ‘preamble’ to the operative provisions of a statute.” *Id.* As such, “a preamble is nothing more than a statement of policy which confers no substantive rights.” *Id.* The court further explained that these provisions “provide guidance to the reader as to how the act should be enforced and interpreted, but they are not a substantive part of the statute.” *Id.* Accordingly, these provisions “may be used to clarify ambiguities, but they do not create rights that are not found within the statute, nor do they limit those actually given by the legislation.” *Id.* Since the substantive text of the TOD ordinance unambiguously allows multi-family housing as a standalone use, we need not look to the statement of purpose and intent for clarification.

Further, in the event that the “Purpose and Intent” section of the ordinance were considered binding on an applicant for development approval, the plain language of the section states that the purpose of the zone is to “[p]rovide for development of compatible mixed uses....” Pleasant View City Code § 18.39.030(A)(2) (emphasis added). The dictionary defines “provide for something” as “[making] it possible for something to happen in the future,” *Macmillan Dictionary*, www.macmillandictionary.com/us/dictionary/american/provide-for, or encourage it, as opposed to requiring a certain outcome. Thus, the “Purpose and Intent” section by its plain language does not *require* mixed-use development.

The *Price* case is still good law. Therefore, the Planning Commission’s decision is illegal (as well as arbitrary and capricious).

To hold that the “intent” of an ordinance is not met merely because there is an exception to the ordinance, which is specifically allowed by the ordinance itself, is nonsensical. Borderline sad. It might even be tragicomic except that the impact on my client is all too real. The intent is, obviously, to allow exceptions.

¹ <https://propertyrights.utah.gov/find-the-law/appellate-decisions/price-development-co-v-orem-city/#:~:text=2000%20UT%2026%2C%20995%20P.2d%201237&text=Public%20property%20is%20held%20in.in%20exchange%20for%20the%20property>. I will refrain here from offering a detailed exegesis of *Price* because I think that the Ombudsman’s opinion is sufficient.

Mr. Nick Norris, Director

December 21, 2023

Page 4

There was some discussion at the Planning Commission hearing about this application's potential for creating a "precedent".² That confusion may have been engendered at least in part by an unfortunate reference to that issue in the otherwise excellent Staff Report. To be clear, the concept of "precedent" in a land use case decision-making process (other than a judicially created "precedent" such as *Price*) makes no sense.

A "precedent" is something that is legally or morally binding on a future consideration of the same or a similar issue under the same or similar facts. Of course, 99.99 % of land use matters do not involve similar facts, issues or laws. The simple fact is that almost all land use decisions involve issues and facts that are, quite literally, *sui generis*. Almost no two properties and their potential or actual development are alike. Properties and developments vary in size, location, surroundings, legal and economic timing as well as details, both large and small, of the design and building plans.

In providing for exceptions from the D1-CBD's presumptive "minimum" height the City Council clearly recognized that mere vertical size was not the be all and end all of the determination of the quality and desirability of any particular development proposed for any particular location.³ One size does not necessarily fit all. The Council specifically provided a process and standards for evaluating and appreciating quality over mere quantity.

But, instead of thoughtfully considering those carefully enumerated factors, or even looking at the analysis of those factors in the Staff Report, the majority of the Planning Commission just said, essentially, "you are the first application and we don't even want to bother looking at the details because we just don't like it and we are scared to exercise our powers because of what might happen in the future". The Planning Commission, in effect due to a fear of future imaginary horrors, re-wrote the D1-CBD ordinance to eliminate the Council's intended plans and standards for the zone. This, the Planning Commission does not get to do. "Stop me now because at some point in the future I might exercise my powers of discretion in a bad way" is not how government works. At least not how it is supposed to work. Instead, that is the very definition of illegal, arbitrary and capricious.

Fear of making a future mistake is not "substantial evidence" justifying ignoring the "substantial evidence" in favor of the application as presented in the Staff Report and as presented to the Planning Commission at the hearing. The decision must be overturned.

I may need to supplement this letter but given that the 10-day appeal clock is so short and it is the holiday season (and I am traveling in Costa Rica) this should be

² By among others, Commissioner Gayle at time stamps 1:18:34 and 1:31:27.

³ Commissioner Barry got this right in her analysis. See, time stamp 1:32:30. Unfortunately, only she and the Chair actually voted the right way based on the correct legal analysis.

Mr. Nick Norris, Director

December 21, 2023

Page 5

sufficient for now. I would also welcome the opportunity to speak with you and Paul Nielson about this.

I would be remiss if I didn't wish you and your staff a happy holiday season. So, cheers to you and all of your friends, families and staff.

Sincerely,

A handwritten signature in blue ink, appearing to be 'BR Baird', with a long horizontal flourish extending to the right.

Bruce R. Baird

cc: Clients

ATTACHMENT C: City Attorney's Brief

ATTACHMENT D: Record of Decision

ERIN MENDENHALL
Mayor



DEPARTMENT of COMMUNITY
and NEIGHBORHOODS
PLANNING DIVISION

December 14, 2023

J. Fisher Companies
Attn: Mitch Vance
1216 Legacy Crossing Blvd. Suite 300
Centerville, UT 84014

RE: Record of Decision for Petition PLNPCM2023-00707 – Edison Street Design Review

Dear Mitch:

On December 13, 2023, the Salt Lake City Planning Commission denied Design Review approval for the property located at approximately 220 & 250 S 200 E.

This Record of Decision is provided to you indicating the date action was taken, the decision of the Planning Commission, and the 10-day appeal period.

Project Description

The Planning Commission reviewed and denied the following project:

Edison Street Design Review at approximately 250 S 200 E - Mitch Vance with J. Fisher Companies, property owner representative, is requesting Design Review approval of a 7-story, 201 unit mixed use building at approximately 220 & 250 South 200 East. The site consists of two parcels totaling approximately 1.45 acres (63,000 SF). The subject property is located in the D-1 Central Business District.

Design Review approval is required for the following modifications to both the D-1 Central Business District standards in 21A.30.020 and the Design Standards in 21A.37.060.D:

- A reduction in the minimum building height from 100' to approximately 78' 6"
- An increase in the maximum street facing facade length from 150' to approximately 307'4", along 200 East
- A decrease in the required glass percentages on both the ground floor and upper floors
- Modifications to the upper floor stepbacks required for buildings between 78-104' within the D-1 zone

The property is within Council District 4, represented by Ana Valdemoros.

Review Process Standards and Findings of Fact

The Planning Commission made specific findings related to the standards of review for Design Reviews as stated in Chapter 21A.59 of the City Code. The decision was also based on the purpose of the zoning ordinance, the purpose of the zoning district where the project is located, the information contained in the staff report, the project details provided by you, testimony from the public, and the discussion of the Planning Commission. Copies of this information will be made available online here: <https://www.slc.gov/planning/planning-commission-agendas-minutes/>.

10-Day Appeal Process

There is a 10-day appeal period in which any affected party can appeal the Planning Commission's decision. This appeal period is required in the City's Zoning Ordinance and allows time for any affected party to protest the decision, if they so choose. The appeal would be heard by the Appeals Hearing Officer. Any appeal, including the filing fee, must be submitted by the close of business on Tuesday, December 26, 2023.

The summary of action for the Planning Commission meeting is located on the Planning Division's website at: <https://www.slc.gov/planning/public-meetings/planning-commission-agendas-minutes/>. If you have any questions, please contact me at 801-535-7660 or amanda.roman@slcgov.com

Sincerely,



Amanda Roman
Urban Designer

cc: File Number PLNPCM2023-00707

ATTACHMENT E: Motion Sheet

Motion Sheet for PLNPCM2023-00707 Edison Street Design Review at approximately 220 & 250 S 200 E

Staff's recommendation:

Motion to approve:

Based on the information presented and discussion, I move that the Commission approve this Design Review application as recommended by staff.

Alternate motions:

Motion to approve with conditions implemented or modified by the Commission:

Based on the information presented and the discussion, I move that the Commission approve this Design Review application coinciding with staff's recommendations but with the following modifications:

1. The Commission should list the conditions that are to be modified, added, or removed.

Motion to deny:

I move that the Commission deny this Design Review application because evidence has not been presented that demonstrates the proposal complies with the following standards:

1. The commission should make findings related to which standards are not complied with.

**ATTACHMENT F: Minutes from 12/13/23
Planning Commission
Hearing**

**ATTACHMENT G: Staff Report from 12/13/23
Planning Commission
Hearing**
