

SALT LAKE CITY LAND USE APPEALS HEARING OFFICER
APPEAL OF PLANNING COMMISSION DECISION
PETITION NO. PLNAPP2024-00140
675 NORTH F STREET
APPEAL BY PRESERVE OUR AVENUES ZONING
HEARING HELD APRIL 18, 2024
DECISION ISSUED MAY 17, 2024

This appeal is from a decision of the Salt Lake Planning Commission on January 24, 2024 to approve a Planned Development Petition and preliminary plat approval for a project at approximately 675 North F. Street.

On April 18, 2024, an appeals hearing was held on this matter and appearances were made by J. Craig Smith for the appellant, Katherine D. Pasker for Salt Lake City and Analise Quinn Wilson for the developer; Ivory Homes. A member of Save Our Avenues Zoning, Dr. Peter Wright, was also allowed an opportunity to speak. Representations and argument made during the hearing along with the written submissions of the parties, the video recording of the Planning Commission hearing and the staff report prepared by Salt Lake City form the basis for this review. As set forth below, the decision of the Planning Commission is affirmed.

The proposal before the Planning Commission is named Capitol Park Cottages with a site plan showing twenty-one lots, some of which will be detached single family, and some will be attached twin homes on 3.21 acres. The site is in the upper Avenues, proximate to multi-family and single family housing. Each property in the development will be built to allow for the inclusion of an accessory dwelling unit or ADU.

The Appellants raise six bases for reversing the decision of the Planning Commission and ask that the decision be reversed and the Planned Development proposal be denied or returned to the Commission for review under what appellants describe as the proper standard. The parties bringing the appeal, who have standing as neighbors, assert that the determination made by the Commission and Planning Staff in its recommendation for approval contain legal errors and that the decision was arbitrary and capricious. The appellants allege the following as the basis for this appeal:

1. The decision violates the Conditions of the Rezone from FR-3 to SR-1.
2. The lack of adequate parking or snow storage violates the compatible use requirement to City Code 21A.62.040.
3. The project does not qualify as a planned development and is not entitled to reduction of setbacks and expansion of building footprints.
4. The decision's approval of high intensity development violates multiple provisions of city code.
5. The planning commission violated due process by approving a subdivision with built ADUs.
6. The Planning Commission decision is illegal as it overburdens an easement and violates City Code.

Appellants carry the burden to show the decision of the Planning Commission was arbitrary, capricious or illegal. Utah Code §10-9a-801(3)(b). A decision is arbitrary and capricious if the land use decision is not supported by substantial evidence in the record. Utah Code §10-9a-801(3)(c)(i). And in order to show that the decision is illegal, appellants must show that the decision arises out of an incorrect interpretation of the law, or conflicts with state law or Salt Lake City ordinance. Appellants allege each of these violations by the Planning Commission in the decision to approve the subdivision and Planned Development.

Ivory Homes requested Planned Development approval from the Planning Commission for modifications of the following zoning requirements:

1. Lot Frontage on Public Streets: 21A.36.010.C, which requires all lots to have frontage on (or touch) a public street.
2. Minimum Lot Area: 21A.24.080.C, which requires 5,000 square feet per single-family lot and 4,000 square feet per twin home lot (half of a building with two units sharing a wall).
3. Lot Width: 21A.24.080.C, which requires 50 feet for a single-family lot and 25 feet per twin home lot (half of a building with two units sharing a wall).
4. Front Yard Setbacks: 21A.24.080.E.1.a, which requires the front of new buildings to project no farther than either the average depths of the block face or 20 feet from the front lot line (if no other buildings are present).
5. Interior Side Yard Setbacks: 21A.24.080.E.3. which, for single-family dwellings, requires buildings to be no closer than 4 feet from a side lot line on one side and 10 feet from a side lot line on the other.
6. Rear Yard Setbacks: 21A.24.080.E.4, which requires 25% of a lot's depth (not less than 15 feet and no more than 30 feet).
7. Maximum Building Coverage: 21A.24.080.F, which limits the surface coverage of all buildings to 40% of a lot.
7. Driveway Width: 21A.44.060.A.6.c.(3), which limits the width of driveways in the SR-1 district to 22 feet.

Each of the modifications is allowed if the Planning Commission finds the overall project to be beneficial pursuant to the planned development standards. 21A.55.010. "A planned development will result in a more enhanced product than would be achievable through strict application of land use regulations, while enabling the development to be compatible with adjacent and nearby land developments." *Id.*

The staff report favored approval of the development and analyzed the benefits as follows:

The proposed development efficiently uses the site in a way that would otherwise be difficult without Planned Development approval. The requested modifications to the zoning standards enable the clustered development to preserve open space. They also provide additional flexibility for spaces within each unit that can be used as an ADU. ... Since the subject property only abuts a public street on one side, strict application of zoning requirements would require redundant and expensive public improvements, including new streets. Development of the site without those public improvements or planned development would be limited by the width of its [property] line abutting F Street. The modifications requested through this process allow for development that fulfills adopted city plans and policies in a way that would not be possible otherwise.

Staff Report, page 104.

During the January 24 meeting, the Planning Commission heard from the developers, from the City, from numerous neighbors and from counsel for several consolidated neighborhood groups. The commission was also presented with a voluminous record of public comment and analysis by the planning staff, the developers and legal counsel for the neighborhood. Following a public hearing, the Commission moved to grant the Planned Development and subdivision application.

TWO ISSUES RAISED BY APPELLANT ARE OUTSIDE THE SCOPE OF THIS APPEAL PROCESS

Appellant asks the Appeals Authority to invalidate the development agreement entered into by Salt Lake City and Ivory Homes and further, to determine the scope of an easement granted to Ivory Homes by contract from The Meridian¹, a neighboring property. Both issues fall outside the scope of the jurisdiction granted this process by Salt Lake City Code.

Pursuant to Salt Lake City Code 21A.16.010 the appeals hearing officer is authorized to make determinations regarding “Appeals alleging an error in any administrative decision made by the...planning commission... involving the application, administration, enforcement or compliance with Title 21A of this code” and “any other matter involving application, administration or enforcement of this code where specifically authorized by a provision of this code.” The hearing officer is specifically not authorized to hear matters of state law, either statutory or equitable. *Id*(B).

In the case of the Development Agreement, appellants ask that Appeals authority find the agreement void. And Appellants ask that the scope of the easement be determined beyond its plain language to prohibit the planned development. Both issues implicate matters of law outside of Salt Lake City’s land use ordinances.

On December 21, 2022, Salt Lake City approved a special development pattern rezone governing the use of the property at issue in the relevant petition. As part of the rezone, the language stated:

¹ Both The Meridian and Ivory are contractual successors to the original parties to the easement agreement.

“The zoning map amendment and master plan amendment...described herein are conditioned upon Applicant entering into a development and use agreement with the city to be recorded as against the property, which agreement shall include the following requirements... The open space area shown on draft development plans submitted to the Planning Commission and City Council shall generally be accessible to the community, with the homeowner’s association or other entity responsible for managing the common area establishing rules regarding the use and hours of availability as it prefers.” The development agreement and ordinance were published and recorded on August 17, 2023.

The development agreement, recorded against the property does not repeat the language referencing the open space shown on the draft development plan and instead states:

Any open space areas located along Capitol Park Avenue or F Street shall generally be accessible to the community at large, with the homeowners’ association or other entity responsible for managing the common area establishing rules regarding the use and hours of availability as it prefers.

The parties do not dispute that the planned development approved by the Planning Commission is consistent with the language of the development agreement. The parties disagree as to whether the reference to “draft development plans” in the rezone reflects an intention to allow some flexibility as to the location of the open space. The developer and Salt Lake City argue that the Development Agreement and the rezone are consistent.

The appellants assert that the development agreement and approved plans violate the rezone and specifically ask that the Development Agreement be found void. Appellants proposed conclusions of law, page 4, ¶ 5. (“The Development Agreement between the City and Ivory did not require Ivory to adhere to Condition 4, in Section 3 of the Rezone Ordinance regarding open space; therefore the Development Agreement violates the Rezone Ordinance and is void.”)

The ordinance governing the scope of the authority of this proceeding does not provide jurisdiction to void a contract between Salt Lake City and a developer. In general, Salt Lake City code directs challenges to development agreements to the District Court. *See*; 21A.50.65-70.

Thus, the request by the appellant to void the development agreement which provides rights pursuant to which the developer and the city proceeded in this matter, and determine its language unenforceable, is not justiciable in this proceeding. Nor was it in the authority of the Planning Commission to void or ignore the development agreement in making its decision.

The same is true of appellants’ request that this proceeding interpret the easement over Capitol Park Avenue. Appellants argue that the easement will be overburdened by traffic, parking and possibly snow removal. The easement at issue grants the owners of the Ivory property “a continuous, perpetual non-exclusive easement and right of way on the Easement Property . . . for pedestrian and vehicular ingress and egress” from the proposed development, across a private street on the Meridian property.

Because of concerns about density, traffic, parking and snow removal, appellants argue that the Planning Commission should have rejected the Planned Development as an overburden on the easement and that the failure to do so makes the decision below illegal. Appellant also argues that the appeals hearing officer should make a determination as to whether the easement and the Ivory development are legally compatible.

The easement constitutes a contract between the Capitol Park development and the owners of the Ivory development and as such, is governed by state law. And as indicated above, a determination of the scope of the easement outside the four corners of its plain language is beyond the authority of the Appeals Authority, which is specifically forbidden from exercising jurisdiction over matters of state law. For the Planning Commission, or this authority to reject the Planned Development based on an analysis of the scope of the easement would have gone beyond a review of the City's land use rules. Contrary to Appellant's claims, the Planning Commission's acted appropriately within the limits of its authority based on the undisputed evidence in the record after being presented with evidence showing the existence of the easement and its language relating to ingress and egress,

Thus, both the scope of the easement and the validity of the development agreement are outside the scope of this proceeding.

APPROVAL OF THE PLANNED DEVELOPMENT WITH ADU INFRASTRUCTURE DOES NOT CONSTITUTE A LEGISLATIVE ACT NOR DOES IT VIOLATE CITY CODE.

Appellants make a number of arguments regarding the Planned Development's ADU component. The planned development application, along with testimony before the Planning Commission indicated that the project will be built with spaces designed to be used as ADUs, if the eventually owner so chooses. The testimony also indicated that those spaces might be used for other purposes; for example a guest room or home office. The developer did use the existence of the ADU infrastructure to promote the project the project for Planned Development approval.

Appellants make two arguments regarding the presence of ADUs. First, they argue that ADUs are intended to be created individually, so that the impact on the neighborhood is gradual and can be assessed over time. This view led appellants to refer to the project as being a "subdivision of ADUs" arguing that this is a new category of use that needs to be created through legislative action, not an administrative decision by the Planning Commission.

Appellant also argue that Salt Lake City code 21A.40.200.C provides that ADUs can only be created by owner occupants who reside on the property and that Ivory, as a developer cannot and does not meet that definition. Arguments related to the additional intensity created by the ADUs and the impact on parking are addressed separately, in that context, below.

Salt Lake City requires ADUs to meet a number of requirements in terms of building form and relationship to the shared principal property. The testimony and submissions before the Planning Commission indicated that the project would be built to be compliant with these regulations. Salt Lake City Code 21A.40.200 E-N. Nonetheless, the record before the Planning

Commission indicated that the use of the created space as ADUs is not presumed or compulsory and it will be the owner and eventual occupant who will determine if the space is used as an ADU.

As a result, evidence on the record supported a finding by the Planning Commission that the ADU component of the planned development does not violate Salt Lake City code about owner occupancy nor does it inevitably create a subdivision of ADUs. A determination as to whether any particular space will be used as an ADU will be up to the eventual homeowner; not the developer. Thus, there was no legislative decision to create a new property designation in the form of a subdivision of ADUs. Consequently, the ADU component of the project is not illegal and the Planning Commission's determination in that regard was supported by evidence on the record and was neither arbitrary nor capricious.

THE PROPOSED PROJECT QUALIFIES AS A PLANNED DEVELOPMENT

In order to qualify for Planned Development approval, the project needed to provide at least one out of several possible benefits to the community. The Planning Commission adopted the staff report finding that the proposed plan provided both open space and the inclusion of housing types that "are not commonly found in the existing neighborhood but are of a scale that is typical to the neighborhood."

Appellants argue that the application failed on both counts and that therefore the project was not entitled to the benefit of the planned development process. The Planning Commission was presented with a voluminous record including presentations by the developer, the City, residents and counsel for those opposing the plan. The arguments raised here were squarely before the Commission and rejected by the majority which found the plan to meet the requirements of the ordinance in terms of benefits to the community and the city.

As set forth above, Salt Lake City code and Utah law provide that the decision of the Planning Commission should be affirmed unless it is not supported by substantial evidence. Where the applicant argues that the decision of the Commission is not supported by substantial evidence, the burden is on the Appellant to marshal the evidence in support of the Planning Commission's decision. Utah Code Ann. §10-9a-705.

Despite appellants assertion to the contrary, the record has substantial evidence from which the Commission could find that the project offers the benefits required by the Planned Development ordinance. For example, the appellants claim the proposed housing is not clustered; but the plans clearly show the buildings situated to the interior of the property with minimal yard space leaving the perimeter of the project as open. The reduction in setbacks is directly tied to this configuration. Despite appellants' suggestion that the Planning Commission was unformed about the nature of the development, the plans were squarely before them.

Nothing in city code imposes a size or shape element as to open space. While appellants dislike the configuration of the plan, evidence on the record is sufficient to support a conclusion that the 25,600 square feet of open space involved in the plan preserves some natural landscape and provides active recreation in the form of walking trails open to the public. There is some

dispute about whether the paths provided in the plan constitute trails pursuant to various city ordinances, but it was not arbitrary and capricious for the Commission, considering the actual plans for the project, to find that walking paths open to the public constitute trails within the meaning of the code. The commission was only required to find one criteria under the ordinance to find the project eligible for planned development approval.

Appellants also argue that because ADUs are allowed as a matter of right, the presence of ADU infrastructure cannot be considered a benefit allowing planned development consideration. During the proceedings below, the Planning Commission received testimony and written evidence that the plan, with built in ADU infrastructure and clustered development constituted a new and different development pattern that had the benefit of advancing the city's housing goals. Moreover, while the project homes have larger square footage than some of the other single family homes in the neighborhood, it was not arbitrary and capricious to find that they fit the scale of the surrounding blocks which include single family homes, and multifamily developments; including a development of 49 attached homes and a multi-story condominium project. While there might be legitimate disagreement that the Ivory project is consistent with the scale with the neighborhood, the decision of the Planning Commission was not without substantial evidence given the undisputed diversity of housing types in the neighborhood.

Because the evidence in the record allowed the Planning Commission to see the F Street project as having a design beneficial and supportive of the City's goals with regard to open space and a diversity of housing types. It was not arbitrary and capricious to find that the proposal qualified for planned development consideration and approval.

THE PLANNING COMMISSION'S ULTIMATE APPROVAL OF THE PROJECT WAS NOT ARBITRARY AND CAPRICIOUS.

Appellants raise a number of other issues regarding the proposed plan largely connected to the size and density of the project and its potential impact on the surrounding community. These concerns touch on parking, snow removal and the density of the project itself including the possibility of ADUs on every lot. Appellants presented arguments and evidence in support of their position and the Planning Commission had an opportunity to assess the objections pursuant to all of the information before them. In no case did the Planning Commission approve an element of the design that was contrary to city code in a manner inconsistent with the planned development guidelines.

Appellants argue that the project suffers from a clear insufficiency of parking. Given that the plans provide 25 percent more parking than is required, the Planning Commission's decision to approve the plan as designed cannot be considered arbitrary and capricious. Similarly, the project's density complies with the underlying zoning district. The Planning Commission could not demand a lower density project in the name of neighborhood compatibility where the plan was consistent with the underlying zoning. Appellants concerns about snow storage in the face of a storm also fail. With no objective standards, it would have been arbitrary and capricious for the Planning Commission to find that a particular amount of snow would overwhelm the project and the neighborhood.

Appellants concerns cited above are largely policy disagreements with both the rezoning and Planned Development Approval. There may be very good reasons to believe the Commission made the wrong choice, however, that is not the purview of this proceeding. The mandate of this appeal is to determine if the Planning Commission made a legal error or acted arbitrarily or capriciously without substantial evidence.

Appellant has failed to meet its burden of proving that the Planning Commission's decision to approve the Applications was incorrect. The Planning Commission received substantial evidence that the Planned Development would comply with conditions of the Development Agreement, the project proposed on the Property met the underlying zoning district standards as to density and parking, and there was substantial evidence the project met the standards for planned development approval set forth in the Code. Approval of a development with infrastructure supporting ADUs was not legislative and within the Commission's scope of authority with regard to the petition before it. Appellant's other arguments as to illegality related to the development agreement and the easement fail as a matter of law with respect to the effect of approval of the Applications. The Planning Commission correctly applied the standards in the Code pertaining to planned development.

The decision of the Planning Commission is affirmed in all respects.

Dated this 17th Day of May, 2024.

/Mary J. Woodhead/

Mary J. Woodhead, Appeals Hearing Officer