

MINUTES OF THE REGULAR MEETING OF THE WEST JORDAN PLANNING AND ZONING COMMISSION HELD NOVEMBER 18, 2015 IN THE WEST JORDAN COUNCIL CHAMBERS

PRESENT: Dan Lawes, Kelvin Green, David Pack, Zach Jacob, Bill Heiner, and Josh Suchoski.
Matt Quinney was excused.

STAFF: Scott Langford, Ray McCandless, Nannette Larsen, Nathan Nelson, Robert Thorup, and Julie Davis

OTHERS: Merrill Bunker, Hank Gundry

The briefing meeting was called to order by Dan Lawes. The agenda was reviewed and clarifying questions were answered.

The regular meeting was called to order at 6:01 p.m.

1. Consent Calendar
Approve Minutes from November 3, 2015

MOTION: David Pack moved to approve the minutes from November 3, 2015 as contained in the staff packet. The motion was seconded by Josh Suchoski and passed 6-0 in favor. Matt Quinney was absent.

2. Bodenvest Rezone; 8990 South 5600 West; Rezone 0.33 acres from M-P (Manufacturing Park) Zone to SC-3 (Regional Shopping Center) Zone; Bodenvest Ltd./Merrill K. Bunker (applicant) [#ZC20150010; parcel 26-02-200-040]

Staff recommended that the Planning Commission accept the findings contained in the staff report and forward a positive recommendation to the City Council to rezone the Bodenvest property located at 8990 South 5600 West from a M-P (Manufacturing Park) zone to the SC-3 (Regional Shopping Center) zoning district.

Merrill Bunker said he has almost 30 acres of shopping center zoning and it didn't make sense to have only one-third acre of manufacturing park zoning. The property was always intended to be a shopping center use.

Dan Lawes opened the public hearing.

Further public comment was closed at this point for this item.

MOTION: Kelvin Green moved based on the findings in the staff report and the evidence and explanations received to forward a positive recommendation to the City Council for the Bodenvest Rezone; 8990 South 5600 West; Bodenvest Ltd./Merrill K. Bunker (applicant) to Rezone .33 acres from M-P to SC-3. The motion was seconded by David Pack and passed 6-0 in favor. Matt Quinney was absent.

3. SME Steel Sandblast Building; 5650 West Old Bingham Highway; Conditional Use Permit for Outdoor Storage; C-M Zone; SME Steel Contractors, Inc. (applicant) [#CUP20150013; parcel 26-11-401-004]

Hank Gundry, applicant, explained that they want to build a sandblast building on the property and the conditional use permit is for light outdoor storage. He will be asking for a variance on the fencing requirement since the Mountain View Corridor is elevated and a wall wouldn't be able to screen the property from view.

Ray McCandless gave an overview of the request. Some time ago, outdoor storage and operations were moved to the subject property, and this conditional use permit will formalize that use. The C-M zone requires a fence with the type being determined by the planning commission. Staff's recommendation is something similar to a Rhinorock wall or steel fence along the west and south property lines. There is the option for the applicant to proceed through the variance process, because there is good cause based on the variation of grade that was not self-imposed.

Based on the findings set forth in the staff report, staff recommended that the Planning Commission grant Conditional Use Permit approval for outdoor storage for property located at 5650 West Old Bingham Highway in a C-M zoning district with the following conditions of approval:

1. Install decorative masonry, Rhino Rock or steel fence along the west and south property lines or obtain a variance to waive screening fence requirements.
2. Meet all applicable Public Safety, Fire, Building and Safety, and Engineering requirements.
3. Per Zoning Ordinance Section 13-7E-10, a conditional use permit may be revoked by the community development director after review and recommendation by the planning commission, after a finding of one or more of the five criteria found in Section 13-7E-10 A-E.

Clarification was given on the property to the south that is a detention based owned by the city. The code requires fencing for areas that are visible to the public.

Dan Lawes opened the public hearing.

Further public comment was closed at this point for this item.

MOTION: Josh Suchoski moved based on reading the staff report and the new evidence, further explanations, and discussion received in the meeting to approve the Conditional Use Permit for Outdoor Storage of the SME Steel property; 5650 West Old Bingham Highway; SME Steel Contractors, Inc. (applicant) with the conditions as listed in the staff report. The motion was seconded by Zach Jacob and passed 6-0 in favor. Matt Quinney was absent.

4. Text Amendments—Amend the West Jordan Municipal Code Section 13-2-3 “Definitions”, Title 13 Chapter 5 Permitted and Conditional Uses, and amending Section 13-8-20 “Special Residential Facilities”; City Wide applicability; City of West Jordan (applicant)

Based on the findings set forth in the staff report, staff recommended that the Planning Commission forward a positive recommendation to the City Council for the proposed text amendments as discussed in the report.

Bill Heiner asked for clarification as to why the city council didn't approve the previous request for this text amendment.

Robert Thorup explained that some on the council thought the gates would be thrown open to these types of facilities and declined to approve it. Some who voted no indicated to him that they were only interested in a postponement to see how other cities handled the same issue. However, many cities have even stricter requirements than West Jordan, but they are not enforced. So that makes it difficult to get a correct reading. West Jordan had a court proceeding when they were trying to validate the 2012 amendments to the code. But upon further research, concluded that we really were trying to defend something we were probably going to lose with respect to group homes, small. So instead the amendment is to make group homes, small, permitted in residential zones but being subject to business licensing with provisions and regulations that go to the issues associated with the group home narrowly rather than trying to regulate them through the broader and less precise tool of zoning.

Zach Jacob asked how the spacing and noticing requirements change the case and how it affects compliance with the Fair Housing Act, etc.

Robert Thorup said the Department of Justice takes the position that any kind of spacing is contrary to the Fair Housing Act by putting a cap on the number of facilities that can go into a particular city. They researched that in 2012 and believed that something in the neighborhood of 400 feet was acceptable along with normal noticing of a conditional use permit. However, the city council changed the spacing to 1,000 feet and a 1,000-foot noticing. They are now trying to reduce the spacing to try to get closer to what some courts have been more comfortable with and to get noticing back to a more reasonable size. The key is that they are eliminating the spacing requirement for the group home, small, use. There is no noticing for the group home, small, because the proposal is that they do not need a conditional use permit. It is the position that hearings for small group homes put the residents to shame when people come to the meetings and call them names. The industry has developed some case law that says putting these through a conditional use permit is a violation of the fair housing requirements.

Kelvin Green referred to the definitions from the Utah Administrative Rules from the Department of Social Services that lists mental health homes, and children and youth homes, and he asked where those would fall in the West Jordan code.

Robert Thorup said he would assume those would qualify as a group home.

Kelvin Green asked why the noticing is at 200 feet and not the standard 300 feet that is used for any other development.

Robert Thorup agreed it would be a good idea to change that.

Dan Lawes opened the public hearing.

Further public comment was closed at this point for this item.

Kelvin Green stated his concerns with Title 4 paragraphs B, D, and E that seem to be zoning regulations rather than licensing regulations and asked if they should be in zoning. Also, paragraph G if we don't allow someone as a condition of probation or parole to be in a mental facility it seems to be a violation of accommodating someone with a mental health issue. In paragraph H it doesn't allow anyone to be an occupant who has been convicted of a drug offense and asked if that was an exclusion under the fair housing act. Current drug users are not protected by ADA, but those who have drug addictions that aren't current drug users are protected by ADA. If they were *ever* convicted of a drug offense and now have other issues such as mental health or permanent disability they would be excluded, which isn't an accommodation under the Fair Housing Act.

Robert Thorup said we would deal with requests for accommodation when they are made. Secondly, even though some of the regulations look like they could fit well in Title 13, the purpose of the amendment is to get out of Title 13 enforcement for group home, small. So in order to get some of the points they are going through the business license, which is more supported by court decisions and the provider community rather than enforcing them through zoning with a conditional use permit.

Zach Jacob agreed with striking the line relating to being convicted of a drug offense. A current disability might not have anything to do with the drug offense, but if it does then it may constitute a direct threat and will be covered by keeping the remaining language.

Kelvin Green agreed.

Josh Suchoski also agreed, partially because if they skip to Title 13 there is a provision for residential substance abuse treatment, small, that would then not be allowed if they are eliminating anyone who had been convicted of a drug offense. He felt that a lot of times we tend to take people who have been misdirected and institutionalize them, which isn't always healthy to do if they can be in an environment of peers who can help. So only giving them opportunities to live in large group homes tends to institutionalize them more.

Kelvin Green referred to paragraph F, the section after the words 'staff member'. The Utah Administrative Rules has an extensive list of requirements. He asked if they should just refer to the Utah Code and the Utah Administrative Rule as a condition of licensing.

Robert Thorup said the city doesn't want to get in the business of enforcing State rules or requirements, so they are keeping it basic.

Josh Suchoski said it clarifies what the city is looking to enforce as requirements, and the State will have their own oversight.

Kelvin Green said it only deals with disabilities and doesn't include the other types.

Robert Thorup said they tried to catch all of the references limited to disabilities and changed them to residential treatment facilities. So they can just take out 'persons with a disability', because it would apply to all residential treatment facilities.

There was a discussion regarding half-way houses. West Jordan has not allowed them and provision G was intended to prevent them. There was a lengthy discussion regarding how someone might create a half-way house by limiting the number to five people or less and not getting a license. However, that doesn't mean they would be allowed. They have certain characteristics that are different from a residence. If the use is something alternate to an accepted residential use such as a business then it becomes regulated. In order to get a business license for a home occupation you have to state the nature of your business and it has to be an approved type. Would the laws for a West Jordan business license identify this type of business and prevent it?

Robert Thorup agreed that we don't know everything that is going on. Chrysalis, the major provider for group homes, small in the state, only came into our radar because they put two group homes next to each other in the same neighborhood and the residents complained. The city found out that they may have as many as six in West Jordan. So once this come into place the business licensing department will contact the state and find out all the licensed facilities located in West Jordan and will then enforce the requirement for a business license. If they were some other type of facilities besides group home, small, then they will enforce the conditional use permit requirement.

Kelvin Green referred to Title 13. He didn't like that the definition of group home, large, is specific to persons with disabilities. Also, the definition says that it can't be used for persons who are diagnosed with substance abuse problems, but we have residential substance abuse treatment homes. He understood the reasons the code limits the distance of substance abuse treatment home to no closer than 500 feet from a school, but it seemed to him that this type of facility will probably have less drugs than any other place because someone is going to be watching them. Substance abuse is a disability and if they limit the distance, then they are not providing for many areas in West Jordan, considering the number of schools and churches in the city. Regarding the spacing of special residential facilities, he also felt 500 feet was too large a distance and agreed with California code of 300 feet and the American Planning Association spacing of one city block, and that would match the city's 300-foot notification standard. He asked if it would be easier to define residential treatment facility using something such as Rule 501 of state residential treatment centers so they wouldn't have to worry about which type of home it is.

Zach Jacob said he liked the spacing and noticing the way it is, but whatever it is the noticing and distance should probably be the same. He hears from people all the time that they aren't aware of the things coming into the city.

Kelvin Green explained that with a larger notification they will just get more people saying that they don't want those people in their community, which the commission can't do anything about. They can only make conditions on the conditional use permit regarding parking, traffic, etc. He felt that a group home can actually be a better neighbor, because they are regulated and under scrutiny.

Bill Heiner felt that a 200-foot noticing was too small.

Kelvin Green wondered if they could just put the noticing requirement consistent with the requirement for conditional use permits and then they could relook at expanding the code for conditional use permits. He agreed that they should be noticing more people than a 300-foot radius.

Josh Suchoski agreed. However, in his experience when there is a controversial item, the people who *do* get notified will tell their neighbors. He liked the idea of consistency either by wording it as 300 feet or by wording that it is consistent with the city ordinance.

MOTION: Dan Lawes moved to forward a positive recommendation to the City Council to amend the West Jordan Municipal Code Section 13-2-3, Chapter 5 permitted and Conditional Uses, and Section 13-8-20 as discussed in the report and in tonight's meeting. The motion was seconded by Josh Suchoski.

Robert Thorup recommended that they specify the changes they want presented to the city council.

Dan Lawes withdrew the motion.

MOTION: Zach Jacob moved to forward a positive recommendation to the City Council for the proposed Text Amendments as discussed in the report with the following amendments:

In Section 4-2U-2F: the phrase 'or persons with a disability' is eliminated and the word 'treatment' be inserted between 'residential' and 'facility' so as to be consistent with the title.

4-2U-2H: Removing the words 'who has been convicted of a drug offense, or'.

Section 13-8-20: A4 Location: Changing the spacing radius to 300 feet.

13-8-20: A5 Notification: Changing the notification radius to at least 300 feet.

The motion was seconded by Josh Suchoski.

AMENDED

MOTION: Kelvin Green moved to further amend the text in 13-2-3 Definitions of Group Home, large, to strike the words 'for persons with disabilities' and Group Home, small, to strike the words 'with disabilities' so some of the other group homes defined in Utah Code would meet that definition. The amendment was accepted by Commissioners Jacob and Suchoski.

Regarding taking out the distance of 500 feet from schools and churches for residential substance abuse treatment homes, most of the commissioners want to leave it alone.

VOTE: The amended motion passed 5-1 in favor with Kelvin Green casting the negative vote. Matt Quinney was absent.

Zach Jacob said the applications for vacant planning commissioner positions are due this Friday.

MOTION: Zach Jacob moved to adjourn.

The meeting adjourned at 7:18 p.m.

DAN LAWES
Chair

ATTEST:

JULIE DAVIS
Executive Assistant
Development Department

Approved this _____ day of _____, 2015