



**Minutes of the
Millcreek Planning Commission
May 20, 2020
5:00 p.m.
Regular Meeting**

The Planning Commission of Millcreek, Utah, met in a regular public meeting on Wednesday, May 20, 2020 at City Hall, located at 3330 S. 1300 E., Millcreek, UT 84106. The meeting was conducted electronically per Millcreek State of Local Emergency Directive No. 2 of 2020 and live streamed via the City's website with an option for online public comment.

PRESENT:

Commissioners

Shawn LaMar, Chair
Russ Booth, Vice Chair (electronic)
David Allen (electronic)
Scott Claerhout (electronic)
Fred Healey (absent)
Mark Mumford (electronic)
Victoria Reid (electronic)
Skye Sieber (excused)
Tom Stephens (electronic)

City Staff

John Brems, City Attorney
Elyse Sullivan, City Recorder
Francis Lilly, Planning and Zoning Director
Robert May, Planner
Kurt Hansen, Legislative Policy Director
Fred Lutze, Deputy City Engineer (electronic)
Blaine Gehring, Legislative Policy Analyst (electronic)
Jared Bowling, IT/Facilities Manager
Samah Safiullah, Planner

Attendees: Craig Larson (electronic), Mark Stephenson (electronic), Council Member Dwight Marchant, and Roger McGillis.

REGULAR MEETING – 5:00 p.m.

TIME COMMENCED: 5:05 p.m.

Chair LaMar called the meeting to order, explained the instructions for the electronic meeting, and read a description explaining the duties of the Planning Commission. Francis Lilly introduced Millcreek's new planner, Samah Safiullah, to the Commission.

1. Public Hearings

1.1 Consideration of SD-20-007, Preliminary Plat Approval for an Amendment to the Pinnacle Place Subdivision Adjusting the Common Boundary Between Two Lots

Location: 4852 S. Pinnacle Place Applicant: Cory Neerings Planner: Robert May

Robert May identified a mistake in the staff report, the subdivision was being considered for final plat approval not preliminary plat. He said the applicant would like to adjust the mutual property line and public utility easement between properties located at 4848 S. Pinnacle Place and 4852 S. Pinnacle Place. The intent was to move the shared boundary line to match the unofficial altered property boundary. May showed a map of the properties and pictures of the site. He said the properties were recognized as nonconforming lots of record and met the

definition in the Foothills and Canyons Overlay Zone (FCOZ) Chapter in Millcreek Code. May said the code provided an option for a property owner located in the boundaries of FCOZ and that had met the definition of “lot of record” to apply for a slope waiver or modification. This would apply to the slope protections standards that prohibits development on slopes greater than thirty percent (30%) or in ridge line protection areas. Such waiver or modification must be approved by Planning Commission and would be subject to the following code found in Section 19.72.060 Slope Protection. If the proposed plat amendment was approved by the City, the subject lots would no longer be eligible for a waiver or modification to the slope protection standard. May said staff sent notices to directly affected entities and property owners of the subdivision public hearing on May 5, 2020. Staff recommended approval of the proposed subdivision amendment subject to the conditions in the staff report.

The applicant’s representative, Roger McGillis, declined to add comment.

Chair LaMar opened the public hearing.

There were no comments.

Chair LaMar closed the public hearing.

Commissioner Reid moved to approve the proposed amendment to Lot #13 and #14 of the Pinnacle Place Subdivision plat, file number SD-20-007, with the conditions found in the staff report. Commissioner Claerhout seconded. Chair LaMar called for the vote.

Commissioners Reid, Claerhout, Allen, Mumford, Booth, and LaMar voted yes. There was no vote given from Commissioner Stephens. The motion passed.

1.2 Consideration of SD-20-008, Preliminary Plat Approval for a One-Lot Subdivision Location: 4115 S. 300 E. Applicant: Mark Stephenson Planner: Francis Lilly

Francis Lilly said the applicant was voluntarily requesting a plat for the purpose of recording a public utility, drainage, ingress, egress, and emergency vehicle easement though it was not required. The applicant received a conditional use approval for 8 townhomes in 2019. The project was already bonded and building permits had been issued. The applicant was seeking to record the existing easement on the plat. The project would begin construction the following week. The easement serviced the Monaco Apartments and to properties to the east. He showed the Commission the approved plans as a review. Lilly said he had received one comment from the public expressing concern about shadows cast to the north of the property. Lilly said he used a tool sent to him by Commissioner Mumford that illustrated a shadow study. Lilly said the nearest point of the subject townhome residences to the vegetable garden was 27 feet away and per the shadow study, from March 24-September 16 the garden in the property to the north would be in full sun if it remained in the current location. He showed the Commission the proposed plat. Staff recommended that preliminary plat approval be granted with the conditions as found in the staff report. Chair LaMar asked about the approved townhome building height. Lilly said it was 35 feet.

Applicant – Mark Stephenson declined to comment.

Chair LaMar opened the public hearing.

Francis Lilly read the received public comment submitted online into the record from France Ross, PO Box 575766 who lives north of the subject property. *“Make sure that my garden, north of the property, be not shaded. And redo my fence separating the two properties. Thank you, France Ross.”*

Chair LaMar closed the public hearing.

Commissioner Mumford, to SD-20-008, moved that it be approved and recommendation to be approved by the staff as outlined by the staff’s recommendations. Commissioner Allen seconded. Chair LaMar called for the vote. All Commissioners voted yes. The motion passed unanimously.

1.3 Consideration of SD-20-009, Preliminary Plat Approval for an Amendment to the Plaza at 39th Condominiums Plat Location: 715 E. 3900 S. Applicant: Craig Larsen Planner: Francis Lilly

Francis Lilly said the application was for a commercial condominium. The plat process was precipitated by the request of the owner to remove the upper level parking deck and not replace it. The Millcreek Building Official had identified the structure as unsafe which necessitated action. When the applicant applied for a demolition permit, the plat was very specific about parking requirements, which Lilly said was unusual, so removing a specific requirement on a plat required an amendment. Staff notified the affected condominium owners of the amendment. Staff requested a parking utilization study to gauge whether or not removing the condition would result in a long-term parking problem on the property. Lilly said parking requirements would be based on the use and could be regulated with the business license. Lilly said the effect of removing the upper parking deck would reduce parking availability from 126 to 85 parking stalls. Strict adherence to Millcreek ordinance would require 106 parking stalls. The study examined three other medical/professional offices in the vicinity of the project, Oakbrook Plaza, The Professional Plaza, and 495 E. 4500 S., as comparisons for parking requirements and found that parking utilization ranged from 50-75% of total parking stalls accounting for occupancy. The subject property had a 62% utilization and was fully occupied. Staff did not object to removing the specific note on the plat for a parking deck, though acknowledged that additional parking may be required if a change of use occurred on the site. Lilly went through parking requirement tables comparing the four sites as they related to Millcreek Code, ITE standards (which only required 80 parking stalls for the subject property), and parking utilization. Staff recommended approval of the proposed amendment with the conditions found in the staff report.

Chair LaMar clarified that the whole building was occupied by a commercial use. Lilly confirmed and said the study did not account for any businesses that may have been closed for the current pandemic. Chair LaMar asked about finding additional parking if the use changed. Lilly read section 19.80.130 of Millcreek Code to the Commission, “In the event that use changes and parking becomes inadequate based on repeated non-seasonal complaints, it is the property owner’s responsibility to seek solutions to their parking problem.” He said there had been an instance in which this code had previously been applied to a property. Commissioner Reid asked if the whole structure would be knocked down and repaved. Lilly said the applicant would take off the upper deck and the bottom would remain in place as surface parking with a retaining wall. Commissioner Claerhout asked if the

remaining parking lot would be below grade. Lilly said yes. Commissioner Booth asked if there was a need to remove surface water from the below grade parking. Lilly said the applicant would have to address that in technical review. Commissioner Mumford asked about the building tenants and designated parking for each office. Lilly said the plat assumed that all parking was shared.

Applicant – Craig Larsen, in answering the Commission's questions, said surface water generated drained to the lower level of the structure and he would upgrade that system. The parking elevation was the same as the ground floor of the building. There would not be designated parking stalls. Commissioner Claerhout asked if there were renderings of the finished parking lot. Larsen said he had not finalized the plans. Lilly brought up defensible space and felt that cutting down the retaining walls would be appropriate. Commissioner Booth would like the north-south barrier walls removed or cut down.

Chair LaMar opened the public hearing.

There were no comments.

Chair LaMar closed the public hearing.

Commissioners Claerhout expressed concern about the aesthetics of the parking lot. Commissioner Allen concurred on visual aesthetics and said he did not see any spill over parking affecting residential areas. Commissioner Stephens wondered if the Commission could make stipulations on the aesthetics of the parking lot. Lilly said the Planning Commission could direct staff to work with the applicant on cutting down the height of the remaining parking lot walls from a safety standpoint. Larsen said he had no problem cutting down the walls for safety per code. He said he would maintain the existing landscaping that acted as a screen of the wall. Commissioner Claerhout said vegetative screening could be added to the front of the parking lot. Commissioner Allen concurred and trusted staff to work with the applicant.

Commissioner Claerhout moved to recommend the proposed amendment to the plaza at 39th South Condominium plat eliminating the specific parking requirement with the conditions outlined in the staff report and added that staff be directed to work with the applicant to reduce the retaining wall height and add safety fencing around the perimeter of the parking structure and if the wall could not be reduced to add some sort of aesthetically appealing landscaping. Chair LaMar confirmed that the motion was for SD-20-009. Commissioner Claerhout confirmed. **Commissioner Allen seconded.** Commissioner Mumford clarified that the motion was for 3900 S. not 700 E. Commissioner Stephens pointed out that the motion should be to approve not recommend. **Commission Claerhout amended his motion to approve and added that the vegetative aesthetic improvements should be for the 3900 S. side of the property. Commissioner Allen seconded the amendment. Chair LaMar called for the vote. All Commissioners voted yes. The motion passed unanimously.**

The Commission took a break from 6:20-6:29 p.m.

1.4 Consideration of ZT-20-004, Recommendation to the City Council Regarding Adoption of a Fencing Ordinance Staff: Blaine Gehring

Blaine Gehring said Millcreek did not have a fencing ordinance and residents continuously sought insight on them from staff. He showed the Commission pictures of examples the ordinance would try to avoid, such as excessive retaining walls, poorly maintained fences, and corner clear view issues. Gehring said discussions on a new fence ordinance began in September of 2017 with further discussions in 2018 and 2019. In using the feedback from the Planning Commission, the Planning and Engineering staffs put together the ordinance draft.

Gehring went over the new ordinance and said it would apply to all new construction of fencing and reconstruction of existing fencing. Existing non-conforming fences would only be subject to the provisions of the ordinance if their location or height impacted the safety or clear view for pedestrians, bicyclists, and/or vehicles. He said "fence" would be defined as a man-made fence, wall, screen, retaining wall, and any living fence such as a hedge. A building permit would be required for any fence over 7 feet high or any retaining wall over 4 feet high per building code. Fences for single-family, two-family, and agricultural properties would allow chain link or open style fencing no higher than 4 feet within 10 feet of the front yard property line or 3 feet for a sight obscuring fence or hedge in the front and corner side yards. All other fencing installed within the minimum front or corner side yard setbacks could not exceed 6 feet in height. Fence height for interior side and rear yards could not exceed 8 feet in height. Fencing for multi-family, commercial, industrial, and institutional development would not be allowed in any front yard area except as provided in the Manufacturing Zone and could not exceed 8 feet in height. The ordinance required that no view-obstructing fence that exceeded 3 feet shall be placed in what is called the clear view area on any corner defined as a triangular area 40 feet in each direction from the intersecting curb lines. The ordinance required that no view-obstructing fence over 3 feet high shall be placed at any driveway, parkstrip, or automobile accessway in a defined clear-view area. Fences shall be made of high-quality materials that require minimal maintenance. Materials such as brick or stone, decorative precast concrete, heavy gauge vinyl, composite materials, wood, stucco, chain link, split rails would be permitted. Prohibited materials included used metal roofing panels, pallets, tarps, chipboard or plywood, scrap lumber, metal or glass, security barbed or razor wire, and electrified fencing.

Francis Lilly said use of retaining walls would be encouraged to reduce the steepness of man-made slopes and provide landscaping pockets. A building permit along with drawings stamped and signed by a professional engineer would be required for retaining walls over 4 feet in height. No fences shall be installed on a front yard retaining wall or within 4 feet parallel to the top of a retaining wall. In discussions with the community councils there was support for a fence ordinance. He said the Mt. Olympus Community Council brought up situations in which properties have an acute slope in the front yard. Residential properties that are not in the Foothills and Canyons Overlay Zone and that have slopes greater than 30% may be eligible for an exception to the retaining wall requirements, subject to a conditional use permit that addresses mitigation of detrimental effects listed in the Conditional Use Ordinance, subject to the following standards:

- No wall may be greater than 16 feet in height, as measured from finished grade.
- Walls may be terraced. Terraces must be at least three feet deep.
- Walls visible from rights of way must include landscaping at least one tree spaced every 30 lineal feet along the wall.

Gehring said he had received comments from the Planning Commission and had other amendments that staff would like to make to the ordinance, so he requested the item be tabled until the next month.

Chair LaMar opened the public hearing.

There were no comments.

Chair LaMar closed the public hearing.

Commissioner Claerhout said the proposals made sense. Commissioner Reid asked about the expansion of clear view from driveways from 10 to 20 feet. Fred Lutze said it was previously measured from the property line, but it was hard to identify where the property line was. He said from the edge of asphalt to the driveway was 12 feet. He said having a fence over 3 feet high 10 feet into the property was redundant to the clear view standard. Commissioner Reid said many people would be out of compliance with that standard. She felt the length of the car was adequate for measuring from the edge of the driveway. Lutze said 5 of the 15 cities in the County that had a fencing ordinance had a clear view triangle. He said it could be defined from the property line instead of the asphalt. Commissioner Reid disagreed. Commissioner Allen said as drafted, clear view issues would not be grandfathered in. He said most of the City would be nonconforming with the adoption of the ordinance and enforcement would be too much of a drain on resources. He felt vegetation and driveway issues should be removed from the clear view requirement. He suggested a 7-foot fence height maximum instead of 8 feet. He said his welfare was not harmed by others having a front yard fence though he did not like them. Lutze said clear view was to the intersection of public roadways. Lilly said the intent was for clear view with streets and the driveway issue would be grandfathered. He stressed that questions and complaints about fencing was in the top three of inquiries received by staff. Staff was experiencing no ability to enforce anything with fences. He would like residents and staff to have clear guidance on fences.

Commissioner Stephens said he had previously sent staff an email with his suggestions to the ordinance and then he went over that email. He asked about retaining walls being in the fence ordinance, allowing corrugated metal as fencing material, a hedge needing to be included in the fence definition, and that electric fences should not be allowed for agricultural uses in residential areas. Commissioner Booth said some terms needed better definitions. Commissioner Mumford said safety for clear views should be the primary concern. Chair LaMar asked about terraced walls and engineering requirements. Lilly said any portion of the wall greater than 4 feet from the bottom of the footing would need engineering. Chair LaMar said 20 feet clear view from the road was excessive and a 10-foot by 10-foot sight triangle with driveways would be more reasonable. He said he did not like tall fences in the front yard, but the Commission should respect property owners' rights. He expressed concern about corner lot restrictions and said the side yard should be treated differently from the front yard. He said a lot of fences had a solid foundation so that should be removed from the definition. Lutze said it should have been continuous footing, not solid. He asked if the Commission was concerned about what other cities were doing. Commissioner Allen said Millcreek was unique and older than some other cities. Lutze said some provisions had to do with public safety. Chair LaMar would like Unified Police Department's input. He wanted some thought as to what would be taken away from property owners with the ordinance.

Commissioner Claerhout said he was interested in knowing about the impacts of other cities' ordinances. Commissioner Allen asked about enforcement on fences with other cities. He asked if site visits would make sense for the Commission. Lilly said staff had a list of fence offender properties and he could send that with pictures to the Commission or do group tours. Kurt Hansen added that the Commission could send questions and/or pictures to staff.

Commissioner Allen moved to continue the item until staff schedules it for a time they think is appropriate. Commissioner Booth seconded. Chair LaMar called for the vote. All Commissioners voted yes. The motion passed unanimously.

2. Continuing Business

2.1 Consideration of GP-20-001, Adoption of the Millcreek Transportation Master Plan as an Element of the General Plan Planner: Francis Lilly and Fred Lutze, Deputy City Engineer

Francis Lilly said the Commission reviewed the Transportation Plan in February and staff had since made some changes. He said there were some reclassifications on the classification roadway map, they increased private lane standards from 12 feet to 12.5 feet width, and added suggested administrative flexibility for side treatments. Fred Lutze said the changes allowed flexibility in dealing with public improvements and private developments. Lilly requested a favorable recommendation for approval. Chair LaMar asked for public comment. There was none. Lilly pointed out that all community councils recommended approval of the Plan.

Commissioner LaMar, considering GP-20-001, moved to recommend to the City Council to adopt the Transportation Master Plan as outlined by staff in the report provided. Commissioner Claerhout seconded. Chair LaMar called for the vote. Commissioners Reid, Claerhout, Stephens, Mumford, Booth, and LaMar voted yes. There was no vote given from Commissioner Allen. The motion passed.

3. Business Meeting

3.1 Approval of April 15, 2020 Meeting Minutes

Commissioner Claerhout moved to approve the April meeting minutes. Commissioner Mumford seconded. Chair LaMar called for the vote. All Commissioners voted yes. The motion passed unanimously.

3.2 Updates from the Planning and Zoning Director

Francis Lilly thanked the Commission for keeping the City going during the pandemic. He said he would like the flexibility for remote participation moving forward and asked the Commissioners about their input in their participation with electronic meetings.

3. Calendar of Upcoming Meetings

- City Council Mtg., 5/26/20, 5:00 p.m. at City Hall
- Mt. Olympus Community Council Mtg., 6/2/20, 6:00 p.m. TBD
- Millcreek Community Council Mtg., 6/2/20, 6:30 p.m. TBD
- Canyon Rim Citizens Association Mtg., 6/3/20, 7:00 p.m. TBD
- East Mill Creek Community Council Mtg., 6/4/20, 6:30 p.m. TBD
- City Council Mtg., 6/8/20, 5:00 p.m. at City Hall

- Planning Commission Mtg., 6/17/20, 5:00 p.m. at City Hall

ADJOURNED: Commissioner LaMar moved to adjourn the meeting at 7:40 p.m. Commissioner Claerhout seconded. Chair LaMar called for the vote. All Commissioners voted yes. The motion passed unanimously.

APPROVED: _____ Date
Shawn LaMar, Chair

Attest: _____
Elyse Sullivan, City Recorder

DRAFT