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File # ZT-21-006

# City Council Staff Report

1<sup>st</sup> Reading

Meeting Date: 9 August 2021  
Applicant: City

**Request: Technical Corrections Regarding Definitions, Noticing, and Planning Commission Membership**

Prepared By: Robert May, Long Range Planning Manager

## SYNOPSIS AND SCOPE OF DECISION

Staff is requesting that City Council adopt several technical amendments to the zoning ordinance, to clarify requirements and to update the code to bring it into compliance with recent changes in state statute.

## PROPOSED ORDINANCE AMENDMENTS

### Planning Commission Procedures

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*First, on August 27, 2018, the City Council increased the number of members of the Planning Commission from seven to nine members (Ord. 2018-50). With that increase to nine members, the required quorum for passage of any item before them would require a five member vote. The ordinance requiring just a four member quorum was never changed, however. This amendment to Section 19.50.060.B. of the Zoning Ordinance would make that change from four members to five members to constitute a quorum.*

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### **19.05.060 Commission Procedures**

- A. The Commission shall annually elect a chair, a vice chair, and such other officers it deems advisable from among its members. The chair and such other officers elected by the Commission shall serve for a term of one year and may serve successive terms.
- B. ~~Four~~ Five members of the Commission shall constitute a quorum.
- C. The Commission shall adopt rules of order and procedure for use by the planning commission in a public meeting and for any other purposes considered necessary for the functioning of the Commission. Such policies and procedures shall be approved by the Council before taking effect.
- D. The Commission shall establish their meeting schedule. Such meeting schedule shall be approved by the Council before taking effect. All meetings, including any necessary public hearings, shall be held after the regular working hours of City. All meetings and public hearings of the Commission shall be public meetings and comply with the provisions of UTAH CODE ANN. § 52-4-1, et seq., and be held in a public place designated.

### **Public Hearings, Meetings, and Noticing**

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*Second, because the major newspapers in Salt Lake County have now gone to a weekly publication rather than daily, the 2021 Utah Legislature in passing SB 201 found it expedient to eliminate the noticing requirement in newspapers. Section 19.04.439 of the Zoning Ordinance currently defines "Public Notices" and the noticing requirements. However, staff feels that having the noticing requirements of "Public Notices" in the definitions section of the zoning ordinance is not the proper place for it. It makes it hard to find for an average person and should realistically be in the administration section of the ordinance. Staff is proposing to have two new definitions for "Public Hearing" and "Public Meeting" in sections 19.04.438 and 19.04.439 and move "Public Hearings and Meetings" (19.04.438) and "Public Notices" (19.04.439) to Chapter 19.02 General Provisions and Administration in two new sections 19.02.150 Public Hearings and Meetings and 19.02.160 Public Notices. In the new section 19.02.160 the requirement for publication in a newspaper would be eliminated. In addition, staff is recommending moving the noticing requirements for street vacations to Chapter 14.48 of the Millcreek Ordinance, in the Highways, Sidewalks, and Public Places Title.*

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#### **19.04.438 Public Hearings and Meetings**

A public hearing means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

#### **19.04.439 Public Meeting Notices**

A public meeting means a meeting required to be open to the public under the Utah Open and Public Meetings Act, as set forth in Utah State Code Title 52, Chapter 4, Open Meetings Act.

#### **19.04.438- 19.02.150 Public Hearings And Meetings**

- A. Public Hearings. A public hearing means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing, pursuant to UCA 10-9a-103(45). Public hearings shall be conducted for the following land use decisions:
1. When adopting or amending a general plan;
  2. When enacting or amending zoning ordinances or the zoning map, a public hearing before the planning commission is required, but is not required before the city council;
  3. Vacation or amendment of platted street, right-of-way or easement;
  4. Annexation policy plans and applications;
  5. Vacating or changing a subdivision plat, but only as required by state law;
  6. Any other land use decision for which a public hearing is required by law.
- B. Public Meetings. Public meeting means a meeting that is required to be open to the public under Utah State Code Title 52, Chapter 4, Open Meetings Act (UCA 10-9a-103(46)). All land use decisions made by the city council and planning commission shall be rendered during open and public meetings. The community development director may also conduct public meetings related to land use applications or other land use issues.
- C. Public Comment. Public comment may also be allowed in any public meeting at the discretion of the public body. Except as provided above, a public body need not allow public comment where a public hearing is not required by this section or state law.
- D. Solicitation of Input. Regardless of whether a meeting is held, prior to making a land use decision the public body may solicit input from affected citizens and property owners and provide a reasonable opportunity for those individuals to express themselves. This may be accomplished through public outreach activities conducted prior to the land use decision in a manner that is consistent with the requirements of due process and fair review and provides an opportunity for the applicant and others participating in the review of the application to respond to the information presented. Relevant information gathered in the process of review is to be included in the meeting record.
- E. The community development director may require a neighborhood meeting to help solicit better neighborhood input on land use application described in (1 and 2) below, prior to a complete land use application being submitted to the city.
1. Developments in a residential zone:
    - a. General Plan Amendments resulting in a change to the future land use map.
    - b. Rezones and Adoptions of Development Agreements.
    - ~~c. Multi-family developments.~~
    - ~~d. Planned unit developments.~~
  2. ~~Nonresidential~~ developments abutting a residential development or residential zone boundary:
    - a. General Plan Amendments resulting in a change to the future land use map.

- b. Rezones and Adoptions of Development Agreements.
  - c. Conditional use applications for uses requiring new construction, or for a use that is anticipated to create traffic or parking demand at least 20 percent greater than the existing use.
  - d. Planned unit developments.
  - e. If a complete application is submitted prior to a Planning Commission meeting held on a month where a community council meeting is not scheduled to be held, a neighborhood meeting may be conducted in lieu of a community council meeting.
3. Applicant's Burden to Conduct a Neighborhood Meeting. If required by the community development director, the applicant shall organize a neighborhood meeting, and provide adequate proof of notice, to include the following:
- a. The applicant shall send a written notice stating the place, date, and time of the neighborhood meeting to all residential property owners, as identified in the Salt Lake County recorder's records, whose property is within the required notice radius for the land use applications described in MKZ ~~19.04.439~~ 19.02.160 below.
  - b. The applicant shall notify these owners at least one week prior to the neighborhood meeting.
  - c. The neighborhood meeting shall be conducted at a location within Millcreek.
  - d. Phone calls or informal door to door contacts shall not be considered to constitute a neighborhood meeting.
  - e. The record of a neighborhood meeting shall include:
    - (1) A list of all individuals who were notified;
    - (2) A roster of attendees; and
    - (3) A copy of the minutes.

~~19.04.439~~ **19.02.160 Public Notices**

- A. Required Notice. The land use authority shall schedule and hold any required public hearing or public meeting according to the provisions of this code and state statute. Public notices for land use decisions not described in this section shall be given in accordance with state statute. The city shall provide notice of the date, place, and time of public hearings or public meetings with the planning commission, and city council, if applicable, within the timeframes established by this section, or as provided by state statute or city ordinance.
1. Mailed Notices. The applicant shall bear the cost of mailing notices. Notice shall be provided by first class mail by the city to property owners and affected entities as established below:

- a. Conditional Use Permits. Notice shall be mailed at least seven days prior to the community council public meeting to any property owners within a three-hundred-foot radius of the property lines of the property on which the conditional use is proposed.
  - ~~b. Right of Way Vacations. Notice shall be given in accordance with state statute UCA 10-9a-609.5(2). Notices shall be mailed at least ten days prior to the public hearing to the following parties:
    - ~~(1) Any property owner whose property is accessed by the portion of the right-of-way that is proposed to be vacated.~~
    - ~~(2) Any property owners within three hundred feet of the portion of the public right-of-way that is proposed to be vacated.~~
    - ~~(3) All property owners whose property is in between the portion of the right-of-way to be vacated and the nearest street intersection.~~~~
  - be. Subdivision Approvals and Amendments to Subdivision Plats.
    - (1) Notice shall be given in accordance with state statute UCA 10-9a.608(1)(c). Additional notices shall be mailed at least ten days prior to the public hearing to any property owners within a three-hundred-foot radius of the boundary of the proposed subdivision plat amendment.
    - (2) For an amendment to a recorded subdivision that involves the alteration or removal of an easement, private right-of-way, condition, limitation, or special requirement, only those persons or entities who have a direct interest in, or who will be directly affected by the proposed change (including the applicant) must be notified of any pending action.
  - d.. Zoning Map Amendments. Notice shall be mailed at least seven days prior to the community council public meeting to any property owners within a six-hundred-foot radius of the boundary of the proposed zoning or future land use map amendment.
  - e. General Plan/Future Land Use Map Amendments. Notice shall be mailed at least seven days prior to the community council public meeting to any property owners within a six-hundred-foot radius of the boundary of the future land use map amendment.
2. Publication of Notices. Notices shall be published by the following methods, unless otherwise provided for by state statute.
- a. Mailed notices shall be prepared and mailed by city staff and paid for by the applicant.
  - b. Public notices shall be published on the city's website and on the state's public notice website at least ten days prior to a public hearing, and at least seven days prior to a public meeting.

~~c. Notices for public hearings shall be published in a newspaper of general circulation in the area at least ten days prior to the public hearing.~~

~~d.c.~~ A hard copy of any public notice issued by the land use authority shall be posted at city hall at least twenty-four (24) hours prior to a public hearing or a public meeting.

3. Posting on Site. Notification signage shall be posted on the property or land for which a conditional use permit, right-of-way vacation, subdivision plat approval, amendment to a subdivision plat, or zoning or future land use map amendment is considered, at least five days prior to the first public meeting on the matter. Notice shall be posted by the ~~community development department~~ City and shall be clearly visible from the right-of-way.

### **Definition Change: Agriculture**

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*This proposed definition change enables the owner of a single-family residential lot to maintain a noncommercial greenhouse associated with a residential use. Currently, wholesale nurseries and greenhouses are allowed as conditional uses in some residential zone. Staff seeks to clarify that, notwithstanding the requirement for wholesale nurseries, residents may maintain a greenhouse for their own enjoyment on their residential property.*

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#### **19.04.020 Agriculture**

"Agriculture" means the tilling of the soil, the raising of crops, horticulture and gardening, ~~noncommercial greenhouses associated with residential uses~~, but not including the keeping or raising of domestic animals or fowl, except household pets, and not including any agricultural industry or business such as fruit-packing plants, fur farms, animal hospitals or similar uses.

### **Definition Change: Building Height**

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*We use the term "original ground surface" to mean the surface of the lot before any human-caused alterations. Another term that developers often use is "existing grade." We simply wish to tie these terms together so that applicants know what staff means by "original ground surface".*

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#### **19.04.095 Building, Height Of**

- A. "Height of building" means the vertical distance above the lowest original ground surface, ~~or "existing grade"~~, at any point on the perimeter of the building to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the highest point of pitched or hipped roofs, or gambrel roofs.
- B. Buildings may be stepped to accommodate the slope of the terrain provided that each step shall be at least twelve feet in horizontal dimension. The height of each stepped building segment shall be measured as required in subsection A.
- C. Original ground surface, ~~or "existing grade"~~, shall be the elevation of the ground surface in its natural state before any ~~manmade human-caused~~ alterations including but not limited to grading, excavation or filling, excluding improvements required by zoning or subdivision ordinances. When the elevation of the original ground surface is not readily apparent because of previous ~~manmade~~

human-caused alterations, the elevation of the original grade shall be determined by the development services division using the best information available.

### **Definition Change: Family**

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*as part of HB 82 passed by the Legislature, the designation of "single-family limit" found in UCA 10-9a.505.5 was amended to eliminate "unrelated individuals" as part of that limit. This means that the definition of "family" in the Millcreek code needs to be amended as follows:*

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#### **19.04.230 Family**

"Family" means:

1. Any number of people living together in a dwelling unit related by blood, marriage or adoption, and including up to three additional ~~unrelated~~ people; or
2. One to four ~~unrelated~~ people living together in a dwelling.

Each ~~unrelated~~ person owning or operating a motor vehicle shall have a lawfully located off-street parking space.

### **Definition Change: Private Garage**

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*As we are considering an accessory dwelling unit ordinance, staff is recommending a change to the definition of "private garage" to require that such a garage actually share a wall in common with the structure, if the garage is to be considered a part of the dwelling, rather than a detached accessory building. Currently, a private garage can be considered a part of the dwelling if it shares a roof ~~or~~ a shared wall in common. In order to maintain the legislative intent of an "internal ADU" as defined by state statute, we are recommending this change.*

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#### **19.04.265 Garage, Private**

"Private garage" means an accessory building designed or used for the storage of not more than four automobiles owned and used by the occupants of the building to which it is accessory; provided, that on a lot occupied by a multiple dwelling, the private garage may be designed and used for the storage of one and one-half times as many automobiles as there are dwelling units in the multiple dwelling. A garage shall be considered part of a dwelling if the garage and the dwelling have a ~~roof or~~ shared wall in common. A private garage may not be used for storage of more than one truck for each family dwelling upon the premises, and no such truck shall exceed two and one-half tons capacity.

### **Definition Change: Lot**

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*Earlier this year, the City Council adopted a change in the city's roadway standards to require a minimum 25 feet for a private roadway. This text change implements a recommendation set forth in the adopted*

*Transportation Master Plan. This change of definition of "lot" brings that definition into conformance with the City standard set forth in Section 14.12.130 of the Millcreek Code.*

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**19.04.335 Lot**

"Lot" means a parcel of land occupied by a building or group of buildings, together with such yards, open spaces, lot width and lot areas as are required by this title, having frontage upon a street or upon a right-of-way approved by a land use hearing officer, or upon a right-of-way not less than ~~twenty~~ **twenty-five** feet wide. Except for group dwellings and guest houses, not more than one dwelling structure shall occupy one lot.

**Definition Addition: Building Footprint**

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*Staff is requesting that the City formally adopt a definition of "building footprint," a term of art that is used often in the code. The maximum size of accessory structures is determined in part by the building footprint of the main building on a parcel. Note – this definition was not reviewed by the community councils.*

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**19.04.093 Building, Footprint of**

"Footprint of building" means the perimeter square footage of a building at the outer edge of the outside walls at the first story of the building,

**COMMUNITY COUNCIL INPUT**

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In July, the Community Councils were given the opportunity to review the proposed ordinance amendments. The **Mount Olympus Community Council, East Mill Creek Community Council** and the **Millcreek Community Council** recommended the changes be adopted with a unanimous vote of the voting members. The **Canyon Rim Citizens Association** did not prepare a recommendation.

**PLANNING COMMISSION RECOMMENDATION**

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See attached minutes from Planning Commission meeting.

**PLANNING STAFF RECOMMENDATION**

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Staff recommends adoption of the proposed ordinance changes.



**Minutes of the  
Millcreek Planning Commission  
July 21, 2021  
5:00 p.m.  
Regular Meeting**

The Planning Commission of Millcreek, Utah, met in a regular public meeting on Wednesday, July 21, 2021 at City Hall, located at 3330 S. 1300 E., Millcreek, UT 84106. The meeting was live streamed via the City's website with an option for online public comment.

**PRESENT:**

**Commissioners**

Shawn LaMar, Chair  
Victoria Reid, Vice Chair  
David Allen (absent)  
Scott Claerhout  
Skye Sieber  
Tom Stephens  
Ian Wright  
Christian Larsen  
Aryel Cianflone (absent)

**City Staff**

John Brems, City Attorney  
Elyse Sullivan, City Recorder  
Francis Lilly, Planning and Zoning Director  
Erin O'Kelley, Planner  
Kurt Hansen, Facilities Director

**Attendees:** Council Member Dwight Marchant, Troy Hart, Kevin Zandberg, Mike Akerlow, John English, Don Bosron, David Baird, Nancy Carlson-Gotts, and Mark Mumford.

**REGULAR MEETING – 5:00 p.m.**

**TIME COMMENCED: 5:04 p.m.**

Chair LaMar called the meeting to order and read a statement explaining the duties of the Planning Commission.

**1. Public Hearings**

**1.1 Consideration of ZM-21-001, Rezone Request from RM to MD for a 65-Unit Senior Living Multifamily Development Location: 4074 S. West Temple Applicant: Todd Reeder Planner: Robert May**

Francis Lilly presented the application on behalf of Robert May. Lilly said the project was income restricted, 25-50% of the County's area median income, for a 64-unit senior development. He said the applicant was the Community Development Corporation of Utah (CDCU) whose historic mission is centered on providing affordable homeownership options, however this would be a rental project geared towards independent seniors above age 62. He said there had been several MD rezones in the area with the purpose of increasing the potential density. The MD Zone does not have an upper density limit. The property would not be constrained by density, but by height, open space, and parking. The MD Zone requires a commercial component or conversion for one in the future. This project does not have a

commercial component; however, it does meet a component of the affordable housing plan. The subject property is vacant and has been used as a dumping ground with overgrown vegetation. Historically the property has always been used as outside storage and unimproved parking and has remained undeveloped. The property has no improvements in terms of curb, gutter or sidewalk and serves as a gap for pedestrians using the sidewalk on adjacent properties.

Lilly presented the site layout which had a 4-story structure with an approximate 12,170 square foot footprint which is approximately 24% of the total lot square footage. The structure is designed to have fire access completely around the perimeter and is situated such to allow for adequate parking and usable open space. The developer is providing roughly 5,000 square feet of usable open space that consists of approximately a 3,000 square foot outdoor community space and a 2,000 square foot community/fitness room with glass frontage. Each 1-bedroom unit includes a patio or balcony consisting of approximately 60 square feet.

Lilly showed renderings of the building and said the materials on the building would be a mixture of charcoal grey and red/brown brick, metal panels with aluminum siding, and a mural wall that faces West Temple. Although mostly broken up, the width of the building is roughly 57 feet wide and 216 feet long. The building design would have a mostly flat roof with a diverse range of articulation and materials. The ground floor to the top parapet is 44 feet (4-story building). The setbacks would meet the requirements of 10 feet in front and 20 feet on the sides and in the rear, but the front would be about 40 feet back from the curb. He then showed the building elevations and landscaping plan.

Lilly said the proposed affordable housing project was intended for low-income seniors between 25% and 55% area median income and would help Millcreek further meet its obligation to provide diverse and affordable housing options. Per the Millcreek General Plan, the greatest demand is for households making less than 50% area median income (AMI). Under Utah Code, municipalities must assure the production of moderate-income housing and submit an annual update for its Moderate-Income Housing Plan. A rezone to accommodate the proposed affordable housing project would help Millcreek meet its implementation strategies and goals for providing affordable housing for households within the 25%-50% AMI. Lilly said Millcreek updated the annual moderate income housing report and it is estimated that an additional 413 units would be needed by 2022 and this project accomplished about 15% of that.

Lilly said Millcreek code allows staff to identify a parking ratio for a use not listed subject to a parking study. A parking study was commissioned by Millcreek and performed by Fehr & Peers that analyzed other senior and affordable housing parking requirement rates ranging from neighboring jurisdictions and suggested state of the art practices from the Institute of Transportation Engineers and the Urban Land Institute. The study considered key characteristics at each development that included at minimum, number of units and bedroom counts, age restrictions, income restrictions, available transit services within a half (0.5) mile and existing pedestrian infrastructure. Based on the findings of the literature review and the collected data, Fehr & Peers recommended that Millcreek implement a parking requirement for senior housing developments, such as the proposed 4074 West Temple development, based on the following standard:

- 0.75 parking stalls per single-bedroom dwelling unit
- 1 parking stall per two-bedroom dwelling unit
- 1.25 parking stalls per dwelling unit with three or more bedrooms.

He noted that the recommendation did not include accessible parking spaces required to satisfy the Americans with Disabilities Act, but it did include guest parking. The traffic study identified Preston Place as having spillover parking. Staff's recommendation was that the 0.75 parking ratio was appropriate for senior housing and requested it as a condition of approval. The parking conditions of approval were: 1) a minimum of 48 required stalls; 2) the total sum of required stalls shall not include the accessible parking spaces required to satisfy the Americans with Disabilities Act and shall be provided in addition to the number of stalls required; and 3) required parking must be provided to residents free of charge. No fees or premiums shall be collected for resident and guest parking.

Lilly said although the proposed affordable housing project did not create a large public response, there were two nearby residents that voiced their concern on parking and raised the issue that the project may be under parked. Their concern was that if under parked, residents and guests would park elsewhere and create unnecessary congestion. It was also communicated to staff and the Millcreek Community Council that in addition to the lack of available parking along West Temple, there were issues with local crime that ranged from vandalism to theft. At their regularly scheduled meeting on July 6, 2021, the Millcreek Community Council voted unanimously to recommend approval of the rezone with the understanding that there was some concern regarding the proposed parking. It was discussed that the parking reduction of 0.75 stalls per unit recommended by staff did not provide adequate parking. Despite the parking study performed by Fehr & Peers outlining the data collection and similar affordable senior housing projects in the area, the consensus was that a few more stalls could be added. Each member agreed that more affordable housing for seniors in Millcreek was needed. Lilly did not see parking being an issue with this project.

Lilly said the development agreement considerations were:

- Use of property is limited to an affordable multi-family senior housing project for low-income seniors that are of 62 years of age or older and fall within a 25% - 50% area median income range.
- Limited to a maximum number of 64 one-bedroom units.
- A minimum of 48 required stalls. Total sum of required stalls shall not include the accessible parking spaces required to satisfy the Americans with Disabilities Act and shall be provided in addition to the number of stalls required.
- Required parking must be provided to residents free of charge. No fees or premiums shall be collected for resident and guest parking.
- Max height of structure is limited to 45 feet measured from original ground surface.
- Structure footprint shall not exceed 12,500 square feet and be limited to 4-stories.
- Exterior building materials shall be of a durable or resilient nature such as brick, stone, prefinished panel, composite materials, or other materials of similar quality, hardness, and low maintenance characteristics shall be used. No single material is allowed to exceed 50 percent of street-facing facades. Other materials may be considered for soffits, or as an accent or architectural feature. Twenty-five-year guarantee, architectural shingles and/or other longer lasting roof materials are required.
- Developer shall provide roughly 5,000 sf of usable open space that consists of approximately a 3,000-sf outdoor community space and a 2,000-sf community / fitness room.

- Developer shall include a minimum of 24 trees consisting of eleven conifers and thirteen deciduous trees with a minimum two-inch caliper.

Lilly reviewed the staff findings of:

- Staff finds that the rezone request and proposal by CDCU will provide an excellent repurpose of the existing property and that the development aligns with the characteristics and uses deliberately intended for the Meadowbrook district.
- Staff finds that the proposed affordable housing project closely follows the standards and principles found in the Millcreek Together General Plan and the updated Moderate Income Housing Plan, and that the slated land use frame within the Future Land Use Map supports the rezone.
- Staff finds that the proposed rezone will accommodate the affordable housing project and help Millcreek meet its implementation strategies and goals for providing affordable housing for households within the 25%-50% AMI.
- Staff finds that the rezone request and proposal will enhance the curb appeal and beautify the property through its building design, landscape plans. The required public improvements will connect the sidewalk creating a safe pedestrian route and make way for curb, gutter, and park strip. Staff finds that the proposal would be a valuable addition to the community and that many of the concerns can be mitigated with a carefully crafted development agreement that outlines conditions for use, parking, density, building height, materials, and landscaping.

Commissioner Claerhout asked about ADA requirements. Lilly said the ADA stalls were in addition to the required 48 stalls, accessible parking was always extra. Chair LaMar asked how the ADA stall count was determined. Lilly said by the number of overall parking spaces. Chair LaMar suggested that more ADA stalls may be needed for the use. Commissioner Reid asked about designated guest parking spaces. Lilly said there was an ADA drop off area. Commissioner Stephens asked about the nature of the building changing in the future with the parking. Lilly said if it changes, he would not permit it without additional parking. He said he could add that stipulation to the development agreement. Commissioner Sieber asked why the number and type of trees was on the landscape plan. Lilly said that was what was presented by the applicant. Commissioner Sieber said conifer trees need more water so by planting them on the west side, they may dry out.

Mike Akerlow, CEO of CDCU, highlighted the annual income for residents of the project as being \$17,000-\$32,000. The rent would be \$370-\$770 a month. The company uses federal low-income housing credits and the credits for this building would be used for a 50-year agreement. He said there were 51 parking stalls shown on the site plan, but it would have 48 stalls and 3 ADA stalls. He said CDCU could designate guest parking. He said a management company would oversee the project. He noted that the community space would be available to everyone for classes and such. He said he would talk to planning staff on the trees. He said affordable housing was difficult to find. Commissioner Stephens asked about the age limit of 62. Akerlow said it was part of the federal tax credit program. Commissioner Sieber asked if there would be controlled access into the building or parking lot. Akerlow said not to the parking lot but to the building. Commissioner Sieber asked about designated medical/temporary parking spots. Akerlow said there would be an extended sidewalk into the parking lot to accommodate that use. Commissioner Sieber asked about garbage disposal and bike lockers. The applicant's architect said the dumpster would be on wheels and he could look at the bike space numbers. Commissioner Sieber pointed out that the area was a food desert. Akerlow said there would be garden beds included on site. Commissioner Reid asked

about the drop off area blocking parking lot access. Akerlow said there was enough room for passing vehicles. Chair LaMar asked about the community room for public uses. Akerlow said the details had not yet been discussed.

*Chair LaMar opened the public hearing.*

There were no comments.

*Chair LaMar closed the public hearing.*

Commissioner Reid asked about adding to the development agreement that additional parking would be required if the senior living use changed. Lilly said the Commission discussed adding planting waterwise endemic plants specific to the region, having garden beds, designating guest parking, describing the mural size, reducing bike locker space, and adding the change of use language for parking.

**Commissioner Stephens, as respects to ZM-21-001 Rezone Request from RM to MD for a 65-Unit Senior Living Multifamily Development, moved that the Planning Commission makes a positive recommendation to the City Council subject to the staff report and the conditions therein, and including change of use language, a review of the bike locker capacity and use, the mural will be included at the same scale as depicted in the schematics, endemic/waterwise plants and trees be planted, and guest parking will be subject to the discussion of planning staff. The development agreement will include a condition that the mural will be similar in quality and scale. Commissioner Larsen seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.**

Lilly said the project would come back to the Commission as a conditional use permit application.

### **1.2 Consideration of ZT-21-006, Technical Corrections Regarding Definitions, Noticing, and Planning Commission Membership in Title 19 of the Millcreek Code Planner: Francis Lilly**

Francis Lilly said he was working on a request for proposals to retain a land use attorney to rework the land use code. He then reviewed the proposed code changes. The Planning Commission quorum would be updated from four to five Commissioners. The Utah State Legislature eliminated the requirement of noticing in the newspaper due to Salt Lake County newspapers publishing once a week. The requirement was then to notice on the property, on the City's website, the Utah Public Notice website, and mailing letters to surrounding property owners. He said he made other minor changes to "Public Hearings" and "Public Meetings" definitions. He moved the right-of-way vacations section into Title 14 where vacations are discussed. He added "noncommercial greenhouses associated with residential uses" to the "Agriculture" definition. He added "existing grade" and "human-caused" terms to the definition of "Building, Height of." He removed "unrelated" people in the "Family" definition to conform with state code. He added a "shared wall" in the "Garage, Private" definition. He changed the "Lot" definition from twenty feet wide to twenty-five feet wide for rights-of-way. Lilly reported that the community councils, except the Canyon Rim Citizens Association who did not prepare a recommendation, recommended approval of the code changes.

Commissioner Sieber asked about the “Building, Footprint of” definition since it differed from the accessory dwelling unit (ADU) ordinance. Lilly said he would make them uniform. Chair LaMar asked about original grade. Lilly read from the “Building, Height of” definition, “When the elevation of the original ground surface is not readily apparent because of previous human-caused alterations, the elevation of the original grade shall be determined by the development services division using the best information available.”

*Chair LaMar opened the public hearing.*

There were no comments.

*Chair LaMar closed the public hearing.*

**Commissioner Sieber, as respects to ZT-21-006, Technical Corrections Regarding Definitions, Noticing, and Planning Commission Membership in Title 19 of the Millcreek Code, moved that we (the Commission) adopt the recommended changes as presented in the staff report. Commissioner Claerhout seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.**

**1.3 Consideration of ZM-21-002, Rezone Request from R-1-8 to R-2-8 for Two Sets of Duplexes Location: 3698 E. 3800 S. Applicant: Matt Newbold Planner: Robert May – WITHDRAWN**

*Elyse Sullivan read a comment received online from Andrew Quist, 3936 S. Hale Dr. “I’m writing concerning the proposed zoning change on the corner of Millcreek Canyon Rd and Parkview Dr (3698 E 3800 S). I could not find where to leave my comment on the city site for the Planning Commission so I am writing you. I am opposed to this zoning change. It makes little sense to me why increasing the density on this parcel by 500% (one dwelling will now become 5) is good for our community. This is not a small increase, or even an ask to double the density. When looking at a map, this parcel is surrounded by much lower densities on almost all sides. I don’t understand the logic of the large increase in density request when minimum half-acre zones are the majority of radius of this project. Furthermore, the plan that was presented at the site showed the 4 duplex units (the driveways) emptying onto Parkview Dr. This is a very residential street where many people walk and run at all hours of the day (including myself). Adding 8 cars onto this residential entrance will seriously hinder those pedestrian activities, in what is now a very walk-friendly neighborhood. If the zoning change is to go forward (which I am opposed to) the duplex driveway entrances should at the very least enter/exit on Millcreek Canyon Road, which is more trafficked. Please confirm I have sent my correspondence to the correct place or direct me to where I should send it. Thank you for listening to someone who will be directly impacted by this zoning change.”*

**Chair LaMar, for ZM-21-002, moved that the Planning Commission recognizes that the applicant, Matt Newbold, has withdrawn the application and so there is nothing for us (the Commission) to hear nor vote on as a motion to proceed with this project. Commissioner Stephens seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.**

## 2. Continuing Business

### 2.1 Consideration of ZT-21-004, a Recommendation to Amend the Millcreek Zoning Ordinance for Internal, Attached, and Detached Accessory Dwelling Units in Residential Zones Planner: Erin O’Kelley

Erin O’Kelley presented a timeline of the ordinance proposal process which started in the summer of 2019. Since then, there had been 2 open houses, 1 townhall, 3 City Council meetings, 5 Planning Commission meetings, 1 joint City Council and Planning Commission meeting, and 10 community council meetings to discuss accessory dwelling units (ADUs). She then reviewed the recent changes to the proposed ordinance. The first was that the conversion of existing buildings would be subject to a land use hearing. She said converting existing buildings could result in a situation that may not meet the original intent or spirit of the draft ordinance. Staff received direction that there should be a process to review conversions on a case-by-case basis which could be denied based on unforeseen detrimental impacts. This would be done through a land use hearing. Land use hearings are noticed to property owners within 300 feet of the subject property and a public hearing is held where the property owner presents their case to the land use hearing officer. These cases would not be reviewed by the Planning Commission or City Council. The land use hearing officer would review the case and consider the conditions of the proposed draft ordinance.

Commissioner Stephens asked who conducted the land use hearings. O’Kelley said a land use hearing attorney contracted with Millcreek. Commissioner Stephens asked about the standards the hearing officer would adhere to. O’Kelley said they are designed based standards and could be found on page 35 of the staff report. Commissioner Stephens asked if the land use hearing officer’s decision was appealable. O’Kelley said yes, to the district court. Commissioner Reid asked about the required distance of existing structures from the property line for ADU conversion. O’Kelley said 6 inches.

The second change in the draft ordinance was an added process for converting existing buildings into an accessory dwelling unit. O’Kelley said the City Council requested staff outline a process by which a property owner may convert an existing accessory structure to an accessory dwelling unit. Currently in Millcreek code, accessory structures 14 feet or less in height have a setback of 30 inches from the side and rear property lines. Requiring a setback that is greater than 30 inches would mean that all existing accessory buildings would not qualify. However, allowing existing buildings to have a more lenient setback than new construction of detached ADUs may result in construction of a garage that would be converted later and thus avoiding the strict guidelines the city intended or conversion of garages that may be less than ideal for a dwelling to avoid the stricter setback requirements. O’Kelley said the ordinance was wanted to create more affordable housing in the city. Staff would like to promote new construction over converting existing structures. She said converting the occupancy from a garage to an ADU was difficult per the building code (requirements on page 62 of the staff report).

O’Kelley went over the community councils’ recommendations on the draft ordinance. The Millcreek Community Council recommended approval subject to a **statistically valid survey be done**, detached ADUs should not follow requirements of accessory buildings in Millcreek Code 19.14, especially the 30-inch setback, greater lot area requirement for detached ADUs (from 8,000 square feet to 12,000). She noted that the council was split on allowing detached

ADUs. The Millcreek Community Council proposed that either detached accessory dwelling units be disallowed, or that the proposed code be modified as follows: detached ADUs must be on lots of at least 12,000 square feet, any existing ADUs must conform to the setback/size/height standards for newly built ADUs (not allowed on the property line, 6 inches), consideration be given to applying the code for setbacks of the principal residence to newly built detached ADUs. This treatment prefers consistency of the rules for the principal residence for a new living unit over the consistency with accessory building code (even though the accessory might be converted to an ADU in the future). The East Mill Creek Community Council recommended approval subject to an adjustment to an 8-foot setback for detached ADUs for new construction and 30 inches for existing, off-street parking still provided for detached ADUs if garages are converted, and no ADUs should be allowed on the property line. The Mt. Olympus Community Council recommended approval subject to more review of enforcement methods on short-term rentals, that on-street parking be prohibited at night, the setback for new detached ADUs be greater than 30 inches, and the rear yard setback for detached ADUs be 30 feet (not 20). The Canyon Rim Citizens Association recommended approval of the draft ordinance as presented. The overall feedback was to clarify off-street parking and adjust language for conversions.

Commissioner Larsen asked if the detached ADU lot area requirement going from 8,000 square feet to 12,000 was based on the standard in other municipalities, if they were allowed. O'Kelley said the standard was based on that fact that most Millcreek neighborhoods are zoned R-1-8 which requires a minimum 8,000 square foot lot.

Nancy Carlson-Gotts, East Mill Creek Community Council, said the Council was opposed to the 30-inch setback. She appreciated the table comparisons in the staff report on what other cities did. She said she talked to area residents, and they do not want the city to look cluttered. She said there were concerns on parking on narrow streets, property values going down, rental properties, separate utilities, parking on the lots, and that there was not a good transportation system in the city.

David Baird, Mt. Olympus Community Council, thanked Millcreek staff. He noted that there was not unanimous consent on adopting the ordinance within the Mt. Olympus community. He said nobody from his community was looking to add ADUs. He expressed concerns with short term rentals and snowplowing in the winter with on street parking. He recommended reinforcing no overnight street parking. He felt that by not requiring garage parking, that there may be in an increase in vehicle burglary and larceny. The Council expressly objected to new detached ADUs being 30 inches from the property line and would rather see an 8–10-foot setback. He said the spirit of the Residential Compatibility Overlay Zone was intended to create appropriate side and back yard buffers, so he was concerned about this ordinance breaking that spirit. He wondered how the code would be enforced and managed.

Mark Mumford, 458 Park Oak Place, asked if multiple ADUs could be added to the 12,000 square foot lot. Chair LaMar said one per property. Mumford also expressed concern about on street criminal action.

Commissioner Stephens asked about the detached ADU setback grandfathered at 30 inches. O'Kelley said new uses would be required to follow the new code. She said "grandfathering" existing setbacks would be for the use of the existing structure, as a garage. She said staff did

not want the code to have different setbacks for new and old ADUs because it would be unfair. Commissioner Reid asked about the Council's desire for allowing garage conversion if covered parking would be an issue. O'Kelley said staff had the same concerns but recommended the Commission decide if the conversion option worked. Francis Lilly said in residential zones, one covered parking stall was required. If a garage was converted, more covered parking would be required. O'Kelley said she tried to incentivize new construction in the ordinance so the covered parking would not be lost. Chair LaMar asked about the 6-inch setback for existing structures. O'Kelley said it was requested by the Council, staff did not recommend the conversion. Commissioner Wright asked about the numbers of residents who have asked for a conversion. O'Kelley said there were public surveys conducted with that data. Lilly said staff often got phone call inquiries.

Commissioner Stephens asked that it be clear that on street parking was prohibited for ADU occupants. Chair LaMar said he was opposed to a 30-inch setback. He said some verbiage needed to be cleaned up in tables in the ordinance. He asked if internal ADUs were the same as attached ADUs. O'Kelley said internal was within the existing footprint of the primary residence and attached was a new addition. Chair LaMar felt it would be a tight fit having a detached ADU on an 8,000 square foot lot. He felt the fairness factor was moot because standards overrode timeliness. He said there were safety concerns with neighboring properties converting garages due to their proximity to each other. Commissioner Reid was sympathetic to the Council's wants but felt the Commission represented the silent majority and suggested more caution be exercised. Chair LaMar said an 8-foot setback was 20% closer than what other cities allowed.

Commissioner Stephens recommended approval of the draft ordinance except that the minimum setback for the detached ADUs should be 10 feet on the side and rear except for existing structures as of the date of ordinance adoption. The setback for existing would be where they currently stood but recommended not less than 30 inches. Commissioner Claerhout recommended new detached ADUs follow single-family dwelling setbacks. Commissioner Stephens confirmed but said that existing structures could be converted. Commissioner Sieber said the 30-inch setback was not enough to be consistent with the community council sentiment and neighboring communities. Commissioner Larsen felt 30 inches was too little for detached ADUs, the 6-inch limit should be at least 1 foot, the lot square footage requirement should be increased, and overnight parking should be prohibited. He respected the Council's desire to allow garage conversion and asked that the Council respect the setback sentiment. Commissioner Sieber appreciated the conversion process in the proposed ordinance. Chair LaMar asked if there was a consensus on converted detached ADU setbacks. O'Kelley said no, it had always been discussed. Commissioner Wright felt that the 30-inch setback was not enough. Chair Lamar said a minimum of 48 inches would create an 8-foot separation between ADUs on neighboring lots.

**Commissioner Stephens, as respects to ZT-21-004, a Recommendation to Amend the Millcreek Zoning Ordinance for Internal, Attached, and Detached Accessory Dwelling Units in Residential Zones, moved that the Planning Commission passes a favorable recommendation of adoption of this ordinance subject to one strong recommendation that the minimum side and rear yard setback for the construction of new ADUs be not less than 8 feet with one exception, and that would be in the event that a homeowner wishes to convert an existing accessory dwelling structure that existed on the date of the adoption of**

**the ordinance, if it qualifies then that structure insofar as setbacks are concerned, the side and rear yard setback of that existing structure is 30 inches or more that insofar as that setback that the structure would qualify for conversion to a detached ADU. The motion failed due to lack of a second.**

Commissioner Reid said she heard that people wanted a bigger setback for existing and new detached ADUs. Commissioner Claerhout said new detached ADUs should follow dwelling setbacks. Commissioner Wright said for new detached ADUS, the minimum setback should be 8 feet, but he preferred 10 (rear yard), with a side setback of 48 inches. Commissioner Larsen agreed. Commissioner Sieber said 8 feet for new and 30 inches for existing. Commissioner Reid said for new 8 feet and existing 48 inches.

**Commissioner Stephens, as respects to ZT-21-004 a Recommendation to Amend the Millcreek Zoning Ordinance for Internal, Attached, and Detached Accessory Dwelling Units in Residential Zones, moved to make a positive recommendation for adoption of the draft ordinance as presented with one major exception, and that is the Planning Commission highly recommends that for new construction detached ADUs that the minimum side and rear yard setback be not less than 8 feet or existing accessory structures, whether it be a garage or some other accessory structure, that the minimum setback on the side and rear yard would have to be not less than 48 inches in order to qualify for conversion for a detached ADU. Commissioner Reid seconded. Commissioner Stephens added to the motion that it was very important that on street parking be prohibited by ADU residents. Commissioner Reid seconded the addition. Commissioner Sieber asked about enforcement. Chair LaMar said it should not be part of the motion, but part of the record that there was concern about it. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.**

The Planning Commission recessed from 7:24-7:34 p.m.

### **3. Business Meeting**

#### **3.1 Approval of June 3, 2021 Special Meeting Minutes**

#### **3.2 Approval of June 16, 2021 Meeting Minutes**

#### **3.3 Approval of June 29, 2021 Special Meeting Minutes**

Commissioner Sieber noted that she was not in attendance at the June 3<sup>rd</sup> meeting but there was a reference to her making a comment on page 3. Commissioner Reid claimed the comment.

**Chair LaMar made a motion to approve the minutes from the June 3<sup>rd</sup> special meeting, the June 16<sup>th</sup> meeting, and the June 29<sup>th</sup> special meeting as included in the staff report with the name correction from Skye Sieber to Victoria Reid (in the June 3<sup>rd</sup> minutes). Commissioner Larsen seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.**

#### **3.4 Approval of Amended Rules of Order and Procedure**

Francis Lilly said conversations about amending the rules of order and procedure started before the pandemic. The proposed amended rules would create a process that participation

for Commissioners, staff, and applicants could be through electronic means with advance notice, would require 4 hours of annual training, and Commissioners could not miss more than 3 meetings a year.

Commissioner Reid requested that the attendance requirement be for regularly scheduled meetings. Lilly said he would make the change. Commissioner Reid said that having the reason for objection on motions would be helpful for the Council to know.

**Commissioner Reid moved to approve the amended rules of order and procedure as presented by staff with the change in section 6 to regularly scheduled meetings. Commissioner Claerhout seconded. Chair LaMar called for the vote. All Commissioners present voted yes. The motion passed unanimously.**

**3.2 Updates from the Planning and Zoning Director**

Francis Lilly said Erin O’Kelley would be leaving employment with Millcreek, and she would be missed. He thanked her for her service.

**4. Calendar of Upcoming Meetings**

- City Council Mtg., 7/26/21, 5:00 p.m. at City Hall
- Mt. Olympus Community Council Mtg., 8/3/21, 6:00 p.m. TBD
- Millcreek Community Council Mtg., 8/3/21, 6:30 p.m. TBD
- Canyon Rim Citizens Association Mtg., 8/4/21, 7:00 p.m. TBD
- East Mill Creek Community Council Mtg., 8/5/21, 6:30 p.m. TBD
- City Council Mtg., 8/9/21, 5:00 p.m. at City Hall
- Planning Commission Mtg., 8/18/21, 5:00 p.m. at City Hall

**ADJOURNED: Commissioner Claerhout moved to adjourn the meeting at 7:47 p.m. Commissioner Reid 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**