



**Minutes of the
Millcreek Planning Commission
February 28, 2023
5:00 p.m.
Special Meeting**

The Planning Commission of Millcreek, Utah, met in a special public meeting on Tuesday, February 28, 2023, at City Hall, located at 3330 S. 1300 E., Millcreek, UT 84106. The meeting was conducted electronically and live streamed via the City's website.

PRESENT:

Commissioners

Shawn LaMar, Chair
Victoria Reid, Vice Chair
Scott Claerhout (electronic)
David Hulsberg (excused)
Christian Larsen
Nils Per Lofgren (excused)
Skye Sieber (excused)
Dwayne Vance (excused)
Ian Wright

City Staff

John Brems, City Attorney
Elyse Sullivan, City Recorder
Kurt Hansen, Facilities Manager
Brad Sanderson, Current Planning Manager
Francis Lilly, Planning & Zoning Director

Attendees: Ann Granato, Virginia Russo

SPECIAL MEETING – 5:00 p.m.

TIME COMMENCED – 5:05 p.m.

Chair LaMar called the meeting to order.

1. Adoption of Findings and Conclusions Regarding the Planning Commission's Denial of RC-22-003, an RCOZ C Special Exception for a Dwelling at 3682 S Craig Circle

John Brems gave background information on the item. Mark Morris is the owner of property located at 3682 Craig Circle. The property is in the R-1-8 Zone and the Residential Compatibility Overlay Zone (RCOZ). On July 27, 2022, Lloyd Architects, on behalf of the property owner, filed an application for an RCOZ Option C Special Exception. The Planning Commission reviewed and denied the application on October 26, 2022. The decision was appealed and heard by the Millcreek Land Use Hearing Officer in February 2023. In his decision, the Hearing Officer said, "1. A partial decision on the issue of the legality of the process set out in the Millcreek Code and the interpretation of applicable state statutes and caselaw has been decided in favor of the City as set forth in the Analysis set forth above. 2. The open issue in this case is whether or not the Planning Commission has substantial evidence to support its decision. It is hereby requested that the Planning Commission supplement the record by providing detailed findings of fact and conclusions which explain the basis for its decision in this case." Brems said if the Hearing Officer did not hear from the Planning Commission, he would decide the case based on what he had. The reason for this

meeting was for the Planning Commission to provide supplemental findings of fact. Brems said staff prepared findings of fact, and if the Commission disagreed with any, to voice it.

Francis Lilly read the presented findings of fact which reflected Brad Sanderson's staff report that was presented for the public hearing on October 26, 2022, and/or were reflected in the meeting minutes of the Planning Commission's discussion of that item.

The Planning Commission hereby makes findings that the Applicant's circumstance are not "unusual or extraordinary" as required by Section 19.71.010 (B)(3), that the Applicant did not demonstrate the existence of the five criteria required by Section 19.71.050 (A)(2), and that the Applicant did not demonstrate the existence of the additional factors set forth in Section 19.71.050 (A)(3). Based on the presentation by staff and by the applicant at the public hearing on October 26, 2022, the Planning Commission makes the following findings:

1. The Property has a front yard bulge located more or less within the center of the front property line, bulging outward to the north, towards the street ("bulge").
2. There is a slight jog on the west property line causing the width of Property to narrow to as little as 90 feet wide.
3. There is a 10-foot drainage easement located along the west side property line, which largely overlaps and is included within the required side yard setback.
4. There is a sudden change in the topography, roughly one third the way back from the front property line (approximately 85 feet from the front property line), in which the property then slopes downward into a natural gully and drainage area ("gully").
5. There is drainage easement near the bottom of the gully, beginning approximately 109 feet back from the front property line, as measured along the shorter or east, side property line. This drainage easement encumbers the remaining southern portion of the Property.
6. The subdivision in which the Property is located was originally proposed as a five-lot subdivision, but ultimately received approval as a four-lot subdivision to increase the buildable area of each lot.
7. The subdivider acquired a portion of the neighboring property to the west (Upland Terrace Lot 5) for the purpose of widening the buildable area of the Property.
8. The bulge further increases the lot depth, and buildable area, of the Property.
9. The buildable area of the Property considering all setbacks, easements, and other encumbrances such as topography of significance is approximately 60 feet deep by 60 feet wide.
10. Staff suggested ways in which the project could be built without need for extraordinary relief as contemplated by Option C. Staff presented to the Applicant and to the Planning Commission the following options, outside of pursuing Option C of the RCOZ ordinance:
 - a. Cantilever the rear deck a few feet, overhanging the gully.
 - b. Reduce the depth of the rear deck and/or front porch.
 - c. Alter a few feet of the edge of the gully with one or more landscaped tiers, thus increasing the buildable depth of the lot.
 - d. Alter the orientation of the house on the lot.
 - e. Flip or mirror the house, placing the garage on the east side of the home.
 - f. Alter depth of the house.

11. A history of the Boyd Circle Subdivision was presented to give a brief background of the subdivision which was recently recorded within the last year.
12. The Planning Commission was shown the proposed site plan and the applicant's building layout, both with and without the exception being granted.
13. The proximate neighborhood is 150 feet radial distance from the Property boundary.
14. The proximate neighborhood is illustrated in the staff report, showing 20 total properties of which 16 total have residential structures.
15. All properties within the proximate neighborhood are located in the R-1-8 Zone.
16. The size of properties within the proximate neighborhood, range between 7,000 and 30,000 sq ft. in size; the median property size being approximately 10,000 sq ft.
17. The Property is 20,373 sq ft which is second largest property within the proximate neighborhood.
18. All the homes in the proximate neighborhood, except two have a 30-foot front yard setback. One of the exceptions has a front yard setback of 27-feet and the other has a front yard setback of 28-feet with the median front yard setback being 30 feet.
19. To avoid any unusual or extraordinary circumstances the gully and other easements were considered during the initial planning and development stages; whereupon the subdivision was reduced from five to four lots; absorbing the fifth lot into the remaining four, and thus further increasing the lot sizes. As a result, the Property is one of the largest lots within the proximate neighborhood.
20. The buildable area of the Property is at least 60' x 60' and is largely unaffected by the unusual circumstances and would seem to be a reasonable buildable area, in terms of both shape and size, to accommodate most home designs and layouts that would be expected to be built and would otherwise be in harmony with the neighborhood.
21. Certain grade changes are permissible by Code. Since the property is not located within the FCOZ overlay zone, some changes to the grading could be made to further extend the depth of the buildable area, so long as the changes do not significantly impede the functionality of the drainage system.
22. There are other options which the same footprint of the desired floor plan could be either slightly modified or oriented to fit on the lot, without the need to further reduce the front yard setback.
23. The Property is mostly rectangular and not an unusual lot shape. The bulge increases the lot depth, and buildable area, of the Property.
24. The gully does not affect the buildable area.
25. The Property does not have drainage problems that affect the buildable area. Furthermore, the drainage problem factor relates to the physical characteristic of the property, and not any easements, which are a title problem.
26. Pursuant to Section 19.71.050(B), Applicant has the burden of proof which the Planning Commission finds that the Applicant did not satisfy.
27. Based on the evidence the Planning Commission finds that allowing an exception of 18 feet is not compatible with existing residences in the proximate neighborhood as required by Section 19.71.050(a)(2)(b). There are no unusual or extraordinary circumstances with respect to the Property as required by Section 19.71.010(B)(3). There are no other factors that the Planning Commission should consider such as unusual lot shape, unusual or difficult terrain, or drainage problems.

- 28. Millcreek Code Section 19.71.050(B), as presented within the synopsis portion of the staff report, the applicant failed to provide detailed information and explanation establishing that:
 - a. The proposed residence will be in harmony with the purpose of this chapter, the general plan and any other land use document applicable to the area.
 - b. The proposed residence will be compatible with existing residential development within a reasonable distance in terms of height, mass and lot coverage, with particular focus on the proximate neighborhood.
 - c. The proposed residence will not be detrimental to the health, safety and general welfare of persons residing within a reasonable distance, with particular focus on the proximate neighborhood.

Lilly said the findings of fact were recommended by staff and the city attorney. Chair LaMar said he liked the findings of fact, especially numbers 9, 10, 17, 18, 20, 26, and 28. Commissioner Reid felt the findings were thorough and wondered about typos. Brems said he would correct the typos. Commissioner Claerhout said the findings reminded him of the October meeting and he felt number 27 summarized the findings quite well. Commissioner Wright felt the findings captured the commission’s discussion and they should all be adopted. Commissioner Larsen concurred.

Lilly said the motion would be adoption of the findings of fact regarding RC-22-003, as submitted by staff, with technical corrections as provided by the city attorney.

Commissioner Larsen moved that the Planning Commission adopt the findings of fact as presented by staff for the Planning Commission’s denial of RC-22-003 RCOZ C Special Exception for a dwelling at 3682 S Craig Circle with technical corrections. Commissioner Wright seconded. Chair LaMar called for the vote. Chair LaMar voted yes, Commissioner Reid voted yes, Commissioner Claerhout voted yes, Commissioner Larsen voted yes, and Commissioner Wright voted yes. The motion passed unanimously.

ADJOURNED: Chair LaMar moved to adjourn the meeting at 5:22 p.m. Commissioner Reid seconded. Chair LaMar called for the vote. Chair LaMar voted yes, Commissioner Reid voted yes, Commissioner Claerhout voted yes, Commissioner Larsen voted yes, and Commissioner Wright voted yes. The motion passed unanimously.

APPROVED: _____ **Date**
Shawn LaMar, Chair

Attest: _____
Elyse Sullivan, City Recorder